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URGENT MATTER

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

IRS Tax Court Ruling Explains Why Proposed Rule 9(e) Must be Rejected

Dear Chairman Clayton and Secretary of the Commission:

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] The full text of the Proposed Rule 9(e) is reprinted in Appendix A of this letter. This third supplemental comment is being filed because Proposed Rule 9(e) directly contradicts a holding by the U.S. Tax Court. As explained below, the Tax Court decision in *Whistleblower 21276-13W v. Commissioner of Internal Revenue,* 144 T.C. No. 15 (2015)[2] (hereinafter "Tax Court decision" or "*Whistleblower 21276-13W*") provides a clear analysis as to why the proposed rule is counter to the statutory language and legislative intent of the Dodd-Frank Act's ("DFA"), linked here: https://www.kkc.com/assets/Site_18/files/SEC/sec78u-6.pdf.

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[1] *See* Whistleblower Program Rules, 83 Fed. Reg. 34,702 and 723-24, 734, 750 (July 20, 2018), https://www.kkc.com/wp-content/uploads/2019/10/2018-14411.pdf. This letter is submitted for the official record and constitutes a formal supplemental comment to our initial comment filed on July 24, 2018 and the two subsequent comments filed directly related to Proposed Rule 9(e) filed on (May 6, 2019, https://www.kkc.com/wp-content/uploads/2019/09/s71618-5453107-184910-2.pdf and September 12, 2019, https://www.kkc.com/wp-content/uploads/2019/10/s71618-6119062-192148-2.pdf).

[2] The decision of the Tax Court is linked here:
https://www.kkc.com/assets/Site_18/files/resources/Whistleblower%2021276-13W%20v.%20Commissioner,%20144%20Tax%20Court%20No.%2015%20(June%202,%202015).pdf.

This letter will follow the Tax Court's reasoning and show how the adoption of the Proposed Rule 9(e) would be counter to both the precedent in *Whistleblower 21276-13W* and the intent of the Dodd-Frank Act. Like the Form 211, the TCR does not include a specific timing requirement. Like the 211, the TCR was created with the anticipation that a whistleblower may communicate with the agency through other avenues, and may communicate with other agencies before filing. Like the Form 211, the TCR was created to ensure that whistleblowers receive awards. And, like the Form 211, the timing of a TCR submission should not be grounds for denying any meritorious whistleblower an award. The Commission should adopt the well supported rational in *Whistleblower 21276-13W* and reject or substantially modify the proposed rule.[3]

I. THE TAX COURT'S EXPLAINED THE IMPORTANCE OF RELYING ON THE POST-SANCTIONS ANALYSIS OF THE WHISTLEBLOWER'S CONTRIBUTIONS WHEN DETERMINING AWARD ELIGIBILITY, NOT ON RELYING ON THE PRE-ENFORCMENT "COMPLAINT" FORM.

In *Whistleblower 21276-13W*, a couple went to great lengths to help the IRS discovery a $1.2 billion fraud, resulting in a criminal conviction against the "Targeted Business," and the United States obtaining $74,000,000 in collected proceeds. The couple had contacted the IRS with information about the fraud and was proactive in ensuring that the IRS had the information needed to succeed in enforcement actions against the Targeted Business. The court described the IRS involvement by stating that "[t]he IRS was involved in the pursuit of the Targeted Business from the beginning of the investigation." And that, "[t]he IRS Agent involved in the investigation of the Targeted Business testified that petitioner husband's cooperation had been essential, and the agent acknowledge that there was no 'Plan B' for the IRS to pursue the Targets Business." *Id.* at 14.

However, as would likely occur if Rule 9(e) were adopted: "[p]etitioners were unaware of any whistleblower award program when they began to assist the Government in its pursuit of the Targeted Business." *Id.* at 15. Even though the agents informed the whistleblowers of the reward program, they did not file a formal Form 211 complaint with the IRS until after the sanction was collected. *Id.* Because "proceeds [had] been collected from the Targeted Business before the petitioners filed their respective Forms 211. . . the classifier [i.e. the IRS Whistleblower Office analyst who reviewed the whistleblower's request for a reward] rejected petitioners' applications." *Id.* at 16. The court in *Whistleblower 21276-13W* set out to address this serious issue, and concluded that the whistleblower's late-filed Form 211 did not justify denying an award.

The IRS Form 211 and the SEC Form TCR are similar in purpose and content. Thus, the Tax Court's analysis of whether or not a late filed Form 211 was an impediment to granting an award is highly probative to the issues raised in Proposed Rule 9(e).

As a threshold matter, the Tax Court differentiated between the Form 11369, an IRS form for determining the merit of a whistleblowers information in collecting the sanction, and the Form

[3] Appendix B to this letter sets forth our proposed modifications to Proposed Rule 9(e). These modifications are consistent with the "first to file" procedures that are part of the False Claims Act, and also take into consideration that unlike the FCA, the Dodd-Frank Act permits multiple whistleblowers.

211. Significantly, the IRS Form 11369 serves a similar purpose as the SEC Form WB APP. The Tax Court reasoned as follows:

> "[t]he Form 11369 [. . .] is prepared for the Whistleblower Office by the IRS operating division that reviews the application and allows the Whistleblower Office to evaluate the merits of the claim before making a final determination. Because petitioner's applications were rejected on the grounds that the Forms 211 were filed late, no such review was made, no Form 11369 was generated, and no Whistleblower Office analyst reviewed the claim." *Id.* at 17, n. 3.

This issue was particularly disturbing to the Tax Court because it clearly indicated that the classifier could not have possibly reviewed the merits of the whistleblowers claims and that denial of their award application on the grounds of timing was inappropriate, thus prefacing its discussion by stating that "*[t]he only issue* to decide herein is whether petitioners were required as a matter of law to file Forms 211 with the Whistleblower Office before providing information to the IRS to qualify for an award under section 7623(b), ***We hold they were not.***" (emphasis added). *Id.* A copy of the IRS Form 211 is linked at:
https://www.kkc.com/wp-content/uploads/2019/10/f211.pdf.

The SEC reward program follows a similar procedure as does the IRS program.

The IRS Form 211 is the equivalent of the SEC's TCR Form.

Likewise, the IRS Form 11369 serves a similar purpose as does the SEC's WB-APP Form. (https://www.kkc.com/wp-content/uploads/2019/10/formwb-app.pdf).[4] Both the SEC Form WB-APP and the IRS Form 11369 are filed and reviewed by the official who will make the final reward recommendation or decision, and both are intended to discuss the actual contributions a

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[4] The Tax Court's reliance on the IRS Form 11369 as a key justification for permitting late-filed Form 211 applications is highly relevant to the Commission' consideration of Proposed Rule 9(e). The IRS Form 11369 is the document prepared by the IRS to determine whether or not an applicant should obtain a reward. As explained in Internal Revenue Manual 4.71.24.4.1(6)c. "The WB Office [i.e. Whistleblower Office] heavily relies on this form when deciding the amount to award the WB." The IRM is linked here: https://www.irs.gov/irm/part4/irm_04-071-024

The Form 11369, entitled ''Confidential Evaluation Report on Claim for Award,'' includes the following information: "narratives prepared by the relevant IRS office(s), explaining the whistleblower's contributions to the actions and documenting the actions taken by the IRS in the case(s). The Form 11369 will refer to and incorporate additional documents relating to the issues raised by the claim, as appropriate, including, for example, relevant portions of revenue agent reports, copies of agreements entered into with the taxpayer(s), tax returns, and activity records." 26 C.F.R. 301.7623-3(e)(2)(iii). (https://www.kkc.com/assets/Site_18/files/IRS_Final-Whistleblower-Rules1.pdf)

GAO Report GAO-16-20 (Oct. 2015) explained the role of Form 11369 in the award determination process: "Using information supplied by the OD [Operating Division] in the Form 11369, the WO [Whistleblower Office] analyst assesses how the whistleblower's actions contributed to the IRS action and determines whether to recommend an award." GAO report at 14, linked at https://www.kkc.com/wp-content/uploads/2019/10/673440.pdf

whistleblower played in the enforcement action. In other words, whereas the Form 211 and the TCR Form are typically filed at the beginning (or in the middle of) an enforcement proceeding, the IRS Form 11369 and the SEC's WB-APP application are filed *after* the enforcement action has terminated and the collected proceeds have been obtained by the United States. Thus it is the IRS Form 11369 and the SEC's WB-APP that permit the deciding officials to objectively review the actual "original information" provided by the whistleblower to determine whether the whistleblower "came forward" with "inside knowledge" and" assist[ed] the Government" in "identify[ing] and prosecut[ing] persons who have violated the securities laws.'' 76 Fed. Reg. 34,300, 359, n. 449.[5] https://www.kkc.com/wp-content/uploads/2019/10/2011-13382.pdf

In the context of the SEC's program, it is the Form WB-APP, and the Commission's review of that Form, that provides the basis for determining reward eligibility, not the TCR. The Proposed Rule 9(e) does not modify the timing requirements or the mandatory nature of the Form WB-APP. The current Commission rules governing that form are not at issue, and are not the subject of any material complaints within the whistleblower community.

The Tax Court's decision permitting the whistleblowers in the *Whistleblower 21276-13W* case to obtain a reward, despite having late-filed the Form 211, was premised on the requirement that the IRS should evaluate the information in the Form 11369, not on the timing of the Form 211 to determine award eligibility.

It is uncontestable that the purpose behind the Dodd-Frank Act's whistleblower award program is to "motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws.'' 76 Fed. Reg. 34,300, 359, n. 449 (2011) (quoting from S. Rep. No. 111–176 at 110). The Tax Court ruling is premised on this fundamental goal, systemic to all major whistleblower reward laws. It required the IRS Office of the Whistleblower to focus on the actual contributions made by the whistleblower in contributing to a successful enforcement action.

II. FILING A TCR IS NOT A CRITERIA FOR ELIGIBILITY, NOR SHOULD IT BE.

The Tax Court's decision is clear. The timely filing of an administrative form must not be a bar to award meritorious whistleblowers.[6] Rather, determinations of award eligibility should be made based on the criteria set out in the statute. Like the False Claims Act ("FCA"), the Dodd-Frank Act sets out a clear criterion for eligibility, and if Congress intended this criterion to include a TCR, they had amble opportunity to do so.

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[5] 76 Fed. Reg. 34,358 (2011) ("Form WB–APP requires the submission of information that is necessary for the Commission to determine award eligibility.").

[6] "*The only issue* to decide herein is whether petitioners were required as a matter of law to file Forms 211 with the Whistleblower Office before providing information to the IRS to qualify for and award under section 7623(b). ***We hold they were not.***" (emphasis added). *Whistleblower 21276-13W,* at 18.

A whistleblower award is to be determined based on:[7]

- "[T]he significance of the information provided by the whistleblower to the success of the covered judicial or administrative action." The proposed rule violates this mandate by failing to take into consideration the significance of the information provided by the whistleblower when automatically disqualifying him/her from an award.

- "[T]he degree of assistance provided." Again, the rule ignores the degree of assistance provided, which is far more significant then whether or not the TCR was filed after the whistleblower provided information to the SEC staff.

- "[T]he programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws." Again, the timing of the filing of a TCR has no relevancy to this determination.

Congressional intent is made apparent by the fact that the current rule permits a reduction of a reward when "[t]here is an unreasonable delay in reporting the fraud."[8] Whistleblowers should be encouraged to report frauds at the earliest possible opportunity. If adopted, Proposed Rule 9(e) would create a system where instead of reporting in the most expedient manner, whistleblowers would be incentivized to wait until after they hire a lawyer, read the regulations underlying the DFA's reward process, and fill out a form that is filed with administrators - not directly with investigators who may have an urgent need for the information, but with another office altogether.

The fact that the Whistleblower Office should thereafter forward the TCR information to the very investigators the whistleblower should have initially contacted further indicates that mandating the filing of a TCR will, at a minimum, cause some delay in the transmittal of information. Worse, there may be a miscommunication that delays the transmittal of information to the investigators and/or the information is never transmitted. Thus, if a whistleblower is aware of the investigators who are currently looking into a fraud, it makes no programmatic sense to sanction these whistleblowers for doing what is only logical and in the best interests of enforcement, i.e. directly contacting the responsible investigators as quickly as possible.

Also, it is hard to imagine that if the whistleblower directly reached out to the investigators conducting the underlying fraud proceeding, that these investigators would immediately tell the whistleblowers to shut-up, reveal nothing, hire an attorney, file a form with the Whistleblower Office, and await a referral from that office. If an investigator is directly contacted by a whistleblower, and offers to provide needed intelligence that could be critical to stopping an ongoing fraud, it would be irresponsible for that investigator to refuse to listen to the whistleblower. Every day that goes by when investors are being robbed could result in damages to innocent investors for which a bankrupt or financially insolvent criminal cannot pay back. This

[7] 15 U.S.C. § 78u-6(c)(1)(B).
[8] 17 U.S.C. § 240.21F-6(b)(1)-(3).

is why numerous provisions in the law and in the commentary approving the initial whistleblower rules emphasize timing as an important goal of the DFA. 76 Fed. Reg. 34,232[9]

The DFA does not specify the timely submission of a TCR, rather, it punishes whistleblowers for failing to report the fraud in a timely manner – not for failing to report the fraud using a TCR.

Rather than obligate whistleblowers to file a TCR **first** as a condition for eligibility for an award, the Act intended forms like the TCR to help support whistleblower willingness *to tell* the SEC about violations of federal security laws with the confidence that they would be awarded for the risk they were taking and their willingness to help. *See Digital Realty Trust, Inc. v. Somers*, 138 S.Ct.767(2015)(https://www.kkc.com/assets/Site_18/files/SEC/Digital%20realty%20v%20somers.pdf. In drafting its current regulations the Commission correctly stated that "[t]he procedural elements in the rules are structured to provide a fair, transparent process for consideration of whistleblower award claims . . . [to] help incentivize individuals to participate in the whistleblower award program."[10] The TCR Form was not intended to exclude meritorious whistleblowers and punish them for failing to comply with arbitrary deadlines and formalities that are divorced from the core intent behind the law, i.e. to "motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws.'' 76 Fed. Reg. 34,300, 359, n. 449.

III. THE STATUTE DOES NOT SPECIFICALLY INCLUDE A TIMING REQUIREMENT

In *Whistleblower 21276-13W* the Tax Court correctly explained that the IRS whistleblower reward law did not include a timing requirement for filing the Form 211: "Respondent concedes that section 7637(b) does not specifically include a timing requirement regarding when whistleblower information must be submitted to the Whistleblower Office." *Id.*, at 18. But despite this lack of legislative mandate the Commissioner had "assert[ed] that to be eligible for an award under section 7623(b), and individual must submit the whistleblower information to the whistleblower on Form 211 **before** any IRS action or examination is carried out with respect to that information." (emphasis added) *Whistleblower 21276-13W*, at 19.

While the IRS argued that the Whistleblower Office was the "gatekeeper of information for purposes of nondiscretionary awards" *Whistleblower 21276-13W*, at 19, the Tax Court held that the Whistleblower Office was established to "centralize management of the whistleblower award program and standardized processing award claims." According to the Tax Court, the Whistleblower Office was not a gatekeeper, but rather simply charged with "investigating the legitimacy of a whistleblower's award claim, not the underlying tax issue." *Id.* at 21. In other words, the filing of the Form 211 was not relevant to the merits of the whistleblower's information, because the Whistleblower Office was not responsible for investigating fraud and was not equipped to make that assessment. The same is true under the SEC program.

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[9] "our strong law enforcement interest in receiving high quality information about misconduct quickly." 76 Fed. Reg. 34,232

[10]The Commission's discussion of their decision to consolidate the proposed TCR and WB-DEC forms into one TCR form "to simplify the process." 76 Fed. Reg. 34,358.

A whistleblower seeking to inform the IRS of fraud could more expediently contact an IRS agent or other law enforcement who would be able to properly investigate the issue. This differentiation between the role of the Whistleblower Office and the role of enforcement investigators was known to the IRS when it tasked the Whistleblower Office with reviewing only the legitimacy of a whistleblower's claims, not the alleged fraud itself. The Tax Court further noted that "the Whistleblower Office has neither sufficient staff nor institutional expertise to investigate [fraud]." *Id.* at 23. And, tasking the Whistleblower Office with investigating fraud would "duplicate the resources already available in IRS operating divisions." *Id.* at 24. Further, the court held that "if the Whistleblower Office opened and examination relating to a taxpayer, such an examination would alert the taxpayer that an informant was involved and this would potentially subject the whistleblower to exposure and retaliation, directly contravening the IRS policy of protecting the identities of informants." *Id.* at 24.

Similarly, the TCR was "designed to capture basic identifying information about a complainant and to elicit sufficient information to determine whether the conduct alleged suggests a violation of the Federal securities laws." 76 Fed. Reg. 34,337. Further, like the Form 211, the sole mention of eligibility in reference to a TCR is the condition that information be submitted "under penalty of perjury that the information he is providing is true and correct to the best of his knowledge and belief." *Id.* at 34,339. The IRS and SEC Whistleblower Offices sever a similar function. Neither investigates the underlying illegal conduct.

IV. THE DODD-FRANK ACT MAKES NO MENTION OF THE TCR BEING THE FIRST MODE OF COMMUNICTION WITH THE SEC

In *Whistleblower 21276-13W*, the Tax Court noted that "[t]he statute makes no mention of the Whistleblower Office's being the first IRS office to receive information, and as a practical matter, nothing prevents the Whistleblower Office from pursuing the whistleblower's information even when another IRS office receives it."

Likewise, neither the Dodd-Frank Act, nor the implementing regulations, make mention that the Office of the Whistleblower shall be the first point of contact for whistleblowers seeking to tell the SEC about fraud. In fact, the opposite is the case. Most notably, the Commission rules reflect this intent behind the law and penalize whistleblowers who "delay" in notifying the "Commission" about a violation. The Commission is defined under securities law as any branch of the SEC, not just one particular office. *See,* Securities Act of 1933, Section 2(5)(" The term 'Commission' means the Securities and Exchange Commission."). Whistleblowers are not penalized under the law (or the regulations) for delaying in filing the Form TCR. In fact, the rules related to internal compliance programs actually *encourage delay* in filing the Form TCR. 76 Fed. Reg. 34,300, 357, n. 438.[11]

The Commission's decision to credit whistleblowers who provide information internally to a corporate compliance program with the legal equivalent of contacting the SEC, even when they did not file a TCR and did not even communicate any information whatsoever to the SEC,

[11] "Finally, the third standard permits a whistleblower to report original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law **before** . . . he reports the information to the Commission." 76 Fed. Reg. 34,300, 357, n. 438

demonstrates the flexible nature of whistleblowing under the Commission's rules. As explained by the Commission:

> Thus, a whistleblower who first reports to an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law . . . could be an eligible whistleblower whose submission is measured as if it had been made at the earlier internal reporting date. This means that even if, in the interim, another whistleblower has made a submission that caused the staff to begin an investigation into the same matter, the whistleblower who had first reported internally will be considered the first whistleblower who came to the Commission[.]

Id., at 34,322.

Inasmuch as the Commission protects the right of whistleblowers first communicate to compliance programs, and who may delay filing a formal TCR for months (or longer), it would be illogical for the Commission to penalize whistleblowers who do make timely reports to the Commission, and late-file the TCR Form. As the Tax Court explained, the key factor in weighing eligibility for a reward is whether or not the Commission obtained the original information it needed to investigate the securities violations from the whistleblower in a timely manner that was able to trigger (or materially contribute to) an actual successful enforcement action.

Indeed it is the failure to timely notify the "Commission" that can penalize the whistleblower. The specific regulation on these issues states as follows:

> (b) *Factors that may decrease the amount of a whistleblower's award.*
>
> * * *
>
> (2) *Unreasonable reporting delay.* The Commission will assess whether the whistleblower unreasonably delayed reporting the securities violations.

§ 240.21F–6 (emphasis in original).

Similarly, the timing of an "initial" report to the Commission can be a factor increasing an award:

> *Criteria for determining amount of award.*
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> * * *
>
> *(a)(1)(ii) The timeliness of the whistleblower's* ***initial report*** *to the Commission or to an internal compliance or reporting system . . .*

§ 240.21F–6(a)(1)(ii) (emphasis added).

This rule does not mention the timing of the filing of the official TCR Form. Instead, it talks about an "initial report" to the Commission. The official definition of "Commission" under the Securities and Exchange Act includes the entire Commission, not any specific office (least of all

the Whistleblower Office). *See* § 2(5) of the Securities Act of 1933. Again, consistent with the Tax Court ruling, the key issue was whether or not the federal agency obtained the "original information" necessary to demonstrate the securities violations and protect investors. Under this rule the "**initial report**" can be made to *anyone* within the SEC.

In its explanatory notes to the rules the Commission explained why it wanted to encourage timely initial reporting to the Commission:

> These definitions are designed to ensure that **the Commission** receives actionable whistleblower information—tips indicating a high likelihood of a substantial securities violation—**in a timely manner**. More specifically, the definitions seek to **incentivize submissions involving information that is unobservable to the Commission**, that is not likely to be uncovered as part of any on-going investigations or examinations, that increases the probability of a successful enforcement action, and that reduces our enforcement costs in terms of time, effort, and resources. We believe that paying awards for whistleblower information that satisfies these criteria helps leverage the Investor Protection Fund to provide the maximum law enforcement benefit . . . This will provide the additional benefit of **incentivizing whistleblowers to report possible violations early**—before they receive a subpoena or are otherwise requested to provide information by the Commission or other regulatory authority.

76 Fed. Reg. 34,357 (emphasis added).

The Dodd-Frank Act also sets out clear elements for whether a whistleblower is an "original source" of information for which a reward may be based. The statute explicitly states that there are multiple valid ways in which the Commission may obtain information about a fraud completely outside of the official "TCR" process, for which a whistleblower could also be eligible for an award – even when that information is indirectly received by the Commission through a government report, Congressional hearing, or even the news media. 15 U.S.C. § 76u-6(a)(3).[12] It would turn the regulatory scheme upside down, if whistleblowers were barred from obtaining rewards because a whistleblower first reported the fraud to the Commission outside the formal TCR process, but at the same time the Commission would be required to pay a mandatory reward

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[12] This provision states, in relevant part, that "original information" for which a reward can be based includes information indirectly provided to the Commission from a whistleblower:

> *The term ''original information'' means in- formation that—*
> *(A) is derived from the independent knowledge or analysis of a whistleblower;*
> *(B) is not known to the Commission from any other source, **unless the whistleblower is the original source of the information**; and*
> *(C) is 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 the whistleblower is a source of the information**.*

15 U.S.C. § 76u-6(a)(3)(A)-(C)(emphasis added.

if the Commission first learned of a fraud from the news media, Congress, or from a government report, without the whistleblower first filing a TCR form.

V. THE FORM ITSELF INDICATES THE MULTIPLE WAYS WHISTLEBLOWERS MAY TELL THE AGENCY ABOUT FRAUD PRIOR TO FILING A FORMAL COMPLAINT.

"IRS auditors do not shy away from directly contacting whistleblowers when in need of assistance." *Whistleblower 21276-13W*, at 24. Neither do SEC staff. The Tax Court noted that the Form 211 itself "anticipate[s] that a whistleblower may approach an operating division [. . .] before notifying the Whistleblower Office [. . .] which instructs the whistleblower to provide the 'Name and Title of IRS employee to whom violation was reported', and [. . .] 'Date violation reported'" *Id.* at 25. Further, the Form 211:

> "**was not, and never has been, altered to discourage whistleblowers from approaching an operating division of the IRS**. To the contrary, revised Form 211 expands the detail about a whistleblower's directly contacting investigating agencies before contacting the Whistleblower Office, including providing space for the whistleblower to report any information submitted Federal agencies as well as State authorities [asking] the whistleblower to provide the '[n]ame and title and contact information of IRS employee to whom violation was first reported, if known'[. . .] '[d]ate violation reported' [. . .] and asks 'Did you submit this information to other Federal or State agencies'? [. . .] If [IRS] position [that Form 211 was meant to be the sole method of communicating fraud to the IRS and the Whistleblower Office was the gatekeeper to investigations], **these lines would be superfluous; in fact, they would be misleading to an unwary whistleblower**."

Similarly, the TCR contains the following prompts:

> "Has the complainant or counsel had any prior communications with the SEC concerning this matter?" TCR 3a., "name the SEC staff member with whom the complainant [. . .] communicated" TCR 3b., "Has the complainant or counsel provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you?" TCR 4a. "If yes, provide details." TCR 4c., "Name and contact information for point of contact at agency or organization, if known. " TCR 4c. " Has the complainant reported this violation to his or her supervisor, compliance office, whistleblower ombudsman, or any other available mechanism at the entity for reporting violations?" TCR 5b. "Has the complainant taken any other action regarding your complaint?"

This language mirrors the language of the IRS Form 211 almost exactly. Further, it is important to note that these questions are placed in the "TELL US ABOUT YOUR COMPLAINT" section of the form, and not the "ELIGIBILITY" section, indicating that the answers to questions about prior communication with the SEC and other agencies or enforcement bodies was not relevant to the determination of eligibility for an award – as was held by the Tax Court in regard to Form 211 in *Whistleblower 21276-13W*.

As in *Whistleblower 21276-13W*, the Commission should acknowledge that these questions on the TCR indicate that the SEC clearly understood that Congress **did not** intend the TCR as a mandatory mode of first communication with the SEC. Rather, like in *Whistleblower 21276-13W*, the Commission should view these questions as demonstrating that the agency "anticipates" that a whistleblower may contact the SEC and other enforcement bodies prior to filing a TCR, and that questions regarding prior agency contact would be "superfluous and misleading to an unwary whistleblower."

VI. THE PROPOSED RULE CONFLICTS WITH THE COMMISSION'S CRITERIA FOR DETERMINING THE AMOUNT OF AN AWARD BASED ON THE PROGRAMATIC GOALS AND THE IMPACT AWARD DECISIONS HAVE ON OTHER POTENTIAL SOURCES.

Among the major criteria approved by the Commission for determining the amount of an award is the impact of an award overall enforcement program and on encouraging sources to come forward.

Under § 240.21F–6, "Criteria for determining amount of award," the Commission focused on the impact reward payments have on the enforcement program itself, not just the impact on an individual whistleblower's well-being. Specifically, award criteria § 240.21F–6(a)(3)(i) states that the Commission must weigh "the degree to which an award enhances the Commission's ability to enforce the Federal securities laws and protect investors" when making a reward determination. Furthermore, the rule goes on to require the Commission to consider **"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."** *Id.*, 240.21F–6(a)(3)(ii) (emphasis added).

Denying a whistleblower a reward under Proposed Rule 9(e), despite the fact that the whistleblower submitted "significant" original information and provided "significant" "assistance" throughout an SEC investigation would have a devastating impact on the reputation of the SEC's program. It would discourage whistleblowers from stepping forward and would undermine the good-will the current program has established with a majority of the whistleblower community. It would completely violate the important policies reflected in §§ 240.21F–6(a)(3)(i) and (ii).

VII. THE LEGISLATIVE HISTORY OF THE DODD-FRANK ACT FURTHER SUPPORTS RELYING ON THE TAX COURT DECISION TO REJECT PROPOSED RULE 9(e).

The legislative history of the DFA demonstrates that the SEC's whistleblower reward program was modeled on the False Claims Act and the IRS whistleblower law. Consequently, the DFA program should be similarly interpreted and the Commission should follow the rationale of the Tax Court in *Whistleblower 21276-13W*. In its initial whistleblower rulemaking proceeding the Commission stated that the Dodd-Frank Act's reward provision was "modeled upon the DOJ and IRS whistleblower program."[13] *See* 76 Fed. Reg. 34,300, 362, linked at:

[13] This letter does not focus on the similarities between the SEC reward law and the False Claims Act, which is the reward law implemented by the DOJ. As explained in our letter dated September 12, 2019,

https://www.kkc.com/assets/Site_18/files/SEC-final-rules-for-Dodd-Frank.pdf
This conclusion is fully supported by the SEC whistleblower reward law's legislative history. *Accord.*, S. Rep. No. 111-176, 2010 at 111, linked at:
https://www.kkc.com/assets/Site_18/files/resources/Rule%208/Senate%20Report%20No.%20111-176.pdf

Moreover, while the reward provisions were under consideration by Congress the SEC's Office of Inspector General did an audit of a pre-existing SEC whistleblower reward program. The OIG strongly recommended that the SEC change the rules related to that program and adopt the "best practices" of the IRS and DOJ reward laws.[14] The Commission agreed with this recommendation, and also agreed that if Congress adopted the reward law that was under consideration, the Commission would also adopt the "best practices" from the IRS and DOJ reward laws.

In the SEC OIG report for which the Dodd-Frank Act whistleblower reward law was predicated, the OIG first explained that it had "identified two government agencies, the Internal Revenue Service (IRS) and Department of Justice (DOJ), that have well-defined whistleblower functions." SEC OIG, Assessment of the SEC's Bounty Program Report No. 474, p. 1 (March 29, 2010), linked at https://www.kkc.com/assets/Site_18/files/SEC-Report-OlderRewardProgram-474.pdf.

The OIG then made an explicit recommendation that the Commission adopt the DOJ and IRS precedents into the newly created SEC program. Significantly, the Commission **agreed** with this recommendation:

> *We recommend that the Division of Enforcement incorporate best practices from the Department of Justice and the Internal Revenue Service into the Securities and Exchange Commission bounty program with respect to* ***bounty applications****, analysis of whistleblower information, tracking of whistleblower complaints, recordkeeping practices, and continual assessment of the whistleblower program.*
>
> *Management Comments. Concur.*

Id., p. 22 (emphasis added).

In Appendix 5 to the OIG report the Commission confirmed that it was adopting the recommendation of the OIG set forth above:

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the DOJ program explicitly rejected the concept that pre-filing information with the responsible governmental entity would in any manner disqualify a whistleblower from obtaining a *qui tam* award, even if the *qui tam* lawsuit was filed years after the whistleblower initially informed the Justice Department of the underlying frauds. Indeed, rejecting the so-called government knowledge defense to an award was one of the primary motivations behind Congress' amending the False Claims Act in 1986 to eliminate this defense.

[14] In our letter dated September 12, 2019 we addressed the relationship between the proposed rule and the DOJ-administered reward law (i.e., the False Claims Act). As explained in that letter, Congress *explicitly and forcefully* rejected a similar rule as is now being proposed by the Commission.

> Recommendation 8 relates to incorporation of best practices from the Department of Justice and the Internal Revenue Service with respect to bounty applications. We concur with this recommendation. As the report notes, the Division has already met with these agencies to identify best practices. The Division will adopt best practices for the existing insider trading bounty program **or will incorporate such practices into any new program should the proposed legislation be enacted.**

Id., p. 30 (reprinting a memorandum from the Director of the Division of Enforcement to the OIG) (emphasis added).

Congress was fully aware of the OIG report when it finalized the DFA whistleblower law, and cited to that report in the official legislative history. Congress discussed the OIG recommendations, knowing full well that that Commission had already officially approved the OIG recommendations, and promised to implement them should the DFA to signed into law:

> "In the report, the Inspector General recommends several important guidelines that any current or future SEC Whistleblower Programs should follow, including: development of specific criteria for bounty awards (including a provision to award whistleblowers that partly rely upon public information), development of tips and complaints **tracking systems**, incorporating best practices from DOJ and IRS's Whistleblower Programs, and establishment of a timeframe for the new policies."

S. Rep. No. 111-176 at 111 (emphasis added).

As can be seen, the "tips and complaints" forms were discussed in the context of improving a "tracking system," not in the context of the "specific criteria" for issuing rewards.

Consistent with ensuring that the Commission implement the recommendations of the OIG, and implement the Congressional intent behind the rewards program, Congress gave the Commission limited rulemaking authority. Congress gave the Commission rulemaking authority over the whistleblower program, but only if those rules advanced the purposes of the law.

As set forth in 15 U.S.C. § 78u-6(j)(emphasis added):

> The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section **consistent with the purposes of this section.**

The purpose behind the Dodd-Frank Act's whistleblower provision could not be clearer. Quoting from Senate Report No. 111–176 at 110, the Commission explained: *''The Whistleblower Program aims to motivate those with inside knowledge to come forward and assist the **Government** to identify and prosecute persons who have violated the securities laws.''*

Vol. 76, No. 113, *Federal Register* 34300, 34359, n. 449 (June 13, 2011)(emphasis added).

Punishing whistleblowers who "come forward and assist the government" with "inside knowledge" and "assist the government to identity and prosecute persons who have violated the securities law" simply because these whistleblowers late-filed a form that is not even mentioned in the statute itself is inconsistent with the core purpose of the law.

When Congress explained the purposes of the whistleblower law, it identified the DOJ and IRS programs as successful models for the SEC to follow, and then endorsed the recommendations of the OIG. Congress was very clear as to what it meant when it limited the Commission's rulemaking authority to *only* implementing rules that are "consistent with the purposes" of the reward law.[15]

Unquestionably, Proposed Rule 9(e) is radically inconsistent with the DOJ program, which unequivocally permits (and even encourages) whistleblowers to inform the Justice Department of any potential false claims prior to the whistleblower filing a formal *qui tam* complaint.[16] Congress did not authorize the Commission to implement regulations that were inconsistent with the IRS and DOJ programs, if those regulations would result in the denial of otherwise qualified applicants, or resurrect the completely discredited "government knowledge" defense.

Nothing in the Dodd-Frank Act's legislative history, or in the DOJ and IRS programs for which the SEC reward law is predicated, supports a departure from the IRS court's decision in.

VIII. THE JUSTIFICATIONS FOR PROPOSED RULE 9(e) DO NOT SUPPORT A DEVIATION FROM THE ACT'S INTENT AND FORESEEABLE CONSEQUENCES OF IMPLEMENTING THE RULE.

The Commission staff justified Proposed Rule 9(e) as follows:

> In proposing this amendment, we observe that compliance with the procedures in Rules 21F-9(a) and (b) advances many programmatic purposes. These include allowing the Commission to promptly determine whether an individual who

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[15] The Dodd Frank Act awards provision set forth in 15 U.S.C. § 78u-6(j) does not provide statutory authority for the proposed rule. That section permits the Commission to deny a reward "to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require." As noted in prior correspondence, this section does not impose any statute of limitations for submitting a TCR, and does not reference any authority to impose a time limitation on filing a TCR. Because an award can only be predicated upon "original information" provided by a whistleblower, the "original information" requirement does impose a time limit. That time limit is tied to the timing of information provided to the enforcement authorities, and is not artificially tied to a bureaucratic mandate. Moreover, even if that rule authorized the Commission to impose a time-limit related to the TCR filings, the time limit advanced in the proposed rules clearly undermines the Congressional intent behind the DFA, and thus would be illegal.

[16] For example, it is now a common practice for the U.S. Attorney's offices to invite *qui tam* attorneys to fully brief the DOJ on a potential False Claims Act case before filing the claim.

> submits information is subject to heightened whistleblower confidentiality protections; helping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility; and assisting the Commission in eventually evaluating the individual's potential entitlement to an award.

As a threshold matter, the Proposed Rule 9(e) did not contain any analysis of the "costs" of implementing this rule, such as the potential impact on securities law enforcement by denying otherwise qualified whistleblowers on the sole ground of their failure to file a form, the impact on the lives of individual whistleblowers who have faced financial ruin for disclosing information to the SEC and will be left without an opportunity to obtain a reward, the adverse publicity that will be generated when these denials are issued, the court appeals that will clearly follow denials under the proposed rule (which could go on for years), and the impact the rule would have on whistleblower-cooperation once the whistleblowers learned that they were disqualified from the reward program.

Regardless, the justifications set forth in the proposed rules are, at best, very weak. Below we review them one-by-one:

1. "*[A]llowing the Commission to promptly determine whether an individual who submits information is subject to heightened whistleblower confidentiality protections.*" This does not provide any justification whatsoever. If an individual seeks to benefit from the heightened confidentiality rules provided in the Dodd-Frank Act they must file a Form TCR. 15 U.S.C. § 78u-6(h)(2) (requiring confidentiality for "whistleblowers" who file for an award). If someone writes a letter to the Chairman of the SEC and provides original information on a securities fraud, neither the DFA nor the current Commission whistleblower reward rules *require* the SEC to maintain the confidentiality of that individual, although other laws or regulations may apply.[17] Likewise, only persons seeking an award are permitted to make an anonymous filing with the SEC under the DFA. 15 U.S.C. § 78u-6(d)(2)(A) ("Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based."). None of these confidentiality rules concern the conduct of an individual *before* they actually apply for an award. Proposed Rule 9(e) targets pre-TCR communications with the Commission, and thus this rationale is inapplicable. The proposed rule seeks to disqualify persons from ever filing a valid TCR. Because Proposed Rule 9(e) strips individuals from qualifying as "whistleblowers" under the DFA, the proposed rule may result in permitting the SEC to lawfully violate the confidentiality of whistleblowers who late-file TCRs, If Proposed Rule 9(e) were to take effect, it could be argued that whistleblowers who late-file TCRs are not permitted to obtain any confidentiality under the DFA because their late-filed submissions were not filed with the SEC in accordance with the Commission's rules, thus placing late-filed TCRs outside the scope of the confidentiality or anonymity requirements of the DFA. This is

[17] Although the Dodd-Frank Act and its implementing regulations do not require that a non-TCR filer's identity be kept confidential, other provisions of law, such as the Privacy Act, may require confidentiality for informants to the SEC. However, those other confidentially rules are not impacted by the DFA.

opposite to the Act's Congressional intent and would undermine the entire SEC whistleblower program.

2. *"[H]elping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility."* The "efficiently processing" argument was completely rebutted in the Tax Court decision. No one is arguing that a TCR should *never* be filed. The issue is one of timing. Furthermore, if the Commission enforcement staff actually relies upon the information provided by an informant outside of the TCR process, the Commission clearly had pre-existing rules governing the handling and processing of information submitted by informants prior to the passage of the DFA. As for assessing "credibility," there is no "magic" to a Form TCR.

   Credibility is usually accessed by interviewing the whistleblower and discussing the materials he or he has provided to the Commission. Outside of the TCR process, Federal law requires that communications between an individual and the Commission be "truthful." 18 U.S.C. § 1001. Furthermore, the TCR Form itself is not designed to seek information that could be used to impeach the credibility of a whistleblower.

   There are far less destructive (and more effective) means to assist the Commission in "efficiently" processing information or accessing credibility than creating a draconian bar on qualifying for an award *after* the Commission staff has used a whistleblower's information to prosecute a successful enforcement action resulting in a major sanction (i.e. over $1 million). In fact, in order for a late-filed TCR applicant to qualify for a reward the Commission would have had to "efficiently process" their information and determine that their information was "credible," because only if the whistleblower's original information is actually relied upon by the Commission does the reward requirements kick-in. Again, this was the precise issue dealt with in the Tax Court case, and the Tax Court correctly held that the enforcement staff responsible for the actual substantive investigation are in the best position to reach a determination as to the merits of a reward, regardless of the timing of the formal Form 211 submission.

3. *"[A]ssisting the Commission in eventually evaluating the individual's potential entitlement to an award."* This goal is currently accomplished by the second form which every whistleblower *must* file in a timely manner, the Form WB-APP, linked at (https://www.kkc.com/wp-content/uploads/2019/10/formwb-app.pdf) The requirement to timely file this form is not being challenged. Moreover, as explained in the Tax Court decision, the information necessary to process an award request is contained in the form that must be filed when evaluating the whistleblower's actual contribution to a successful enforcement action. Within the IRS this form is known as the Form 11369. The IRS Form 11369 serves a similar purpose as the SEC WB-APP Form. Thus, the role of the TCR in evaluating an ultimate qualification for a reward is, in practice, *de minimis.* Just as in the Tax Court case, it is the enforcement personnel who will know the actual contributions made by the whistleblower, and will be in the best position to provide the Commission with accurate information about that contribution of the applicant, and whether or not the applicant should obtain a reward.

Notwithstanding the weakness of the Commission's published justification for Proposed Rule 9(e), the proposed rule can be modified to address the Commission's concerns without the adverse impact that the proposed rule will have on individual whistleblowers, the investigation of securities fraud, the reputation of the SEC and the whistleblower program.

IX. PROPOSED RULE 9(e) SHOULD BE MODIFIED TO ADDRESS LEGITIMATE CONCERNS WHIL ALSO ENSURING THAT THE SEC PROGRAM IS ADMINISTERED IN ACCORDANCE WITH THE "BEST PRACTICES' OF THE IRS AND DOJ PROGRAMS.

Appendix B to this letter sets forth our suggested modifications to Proposed Rule .

The proposed modification creates a strong incentive for individuals to timely file the Form TCR, without the harsh and counterproductive impact set forth in the current Proposed Rule 9(e). The modification is based on a similar rule that exists in the False Claims Act ("FCA"). Under the FCA a whistleblower may alert the government as to the frauds he or she witnesses prior to filing a formal FCA complaint. Thus, whistleblowers do not suffer any adverse impact if they quickly alert the government to wrongdoing outside of the formal process to apply for a reward.

However, under the False Claims Act there is a "first to file" rule. 31 U.S.C. 3730(b)(5), linked at: https://www.kkc.com/assets/Site_18/files/whistleblowers/fca_statute.pdf. Under the FCA's "first to file" rule, a whistleblower is *not* disqualified from a reward if they provide the United States government with original information about a fraud. However, if that whistleblower sleeps on his or her rights, and does not timely file a formal FCA complaint, that individual is at risk of not being classified as the "first to file." Only the "first to file" can qualify for a *qui tam* reward.

Because only the first whistleblower to file a formal FCA complaint qualifies for a reward there is a strong incentive to timely file the official complaint. Thus, any person who has original information about FCA violations, but delays in filing the formal FCA complaint, risks being disqualified from the reward. Whistleblowers are incentivized for quickly filing the FCA complaint, but they are *not penalized* for contacting the government prior to filing the FCA complaint.

The first modification set forth in Appendix B creates a "first to file" rule for the SEC program. Our proposed modification in Appendix B creates a system that serves the Commission's intended goal of incentivizing whistleblowers to file a TCR Form quickly, without penalizing them for doing the right thing. Additionally, because this modification is based on the FCA, it is consistent with the recommendations of the SEC OIG and the Congressional intent behind the Dodd-Frank Act program, by incorporating a "best practice" from the FCA.

The second modification addresses one difference between the Dodd-Frank Act and the FCA. Under the FCA *only* the "first to file" can qualify for a reward. However, the DFA permits multiple whistleblowers to qualify for awards as long as they provided the Commission with original information that led to a successful enforcement action. Thus, the second modification takes that difference into consideration and permits a narrow exception that would permit a second

whistleblower to qualify for a reward, even if he or she filed the TCR after the first whistleblower's submission was received.

CONCLUSION

Adopting Proposed Rule 9(e) in its current form would be completely inconsistent with well-reasoned Tax Court precedent. The Tax Court decision is completely consistent with the legislative history of the DFA's whistleblower provision, along with the statute's language and definitions. Moreover, the Tax Court ruling is fully consistent with the 1986 amendments to the False Claims Act, a statute for which Congress pointed to as precedent for the SEC law. Indeed, the False Claims Act was amended in 1986 to cure the very problem Proposed Rule 9(e) would create.[18]

In its current form Proposed Rule 9(e) does not encourage more whistleblowers to make disclosures, and reward whistleblowers for doing so. It will have the opposite impact. Proposed Rule 9(e) would foreclose eligibility to an untold numbers of whistleblowers, depriving them the opportunity to protect themselves financially after risking their livelihoods with the expectation that they will be protected and compensated for their service to the country and its laws. Publicity surrounding these unjust denials will have a disastrous impact on the program and the reputation of the SEC. The Commission will be viewed as anti-whistleblower, and complicit in destroying the financial well-being of whistleblowers who lost their jobs and careers trying to report violations of law.

Section 9(e), if approved, would undermine the core purpose of the Dodd-Frank Act, i.e. "motivat[ing] people who know of securities law violations to tell the SEC." *Digital Realty Trust, Inc. v. Somers*, 138 S.Ct. 767, 773 (2018) (quoting S. Rep. 111-176 at 38).[19]

Attached to this letter are source materials cited herein. These source materials are intended to assist the Commissioners and the staff in ensuring that the proposed rules serve the purposes of the DFA.

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[18] *See* Letter from Kohn, Kohn & Colapinto, LLP dated September 12, 2019). (https://www.kkc.com/wp-content/uploads/2019/10/s71618-6119062-192148-2.pdf)

[19] As previously noted in our May 6th filing, although the proposed rule has an extremely narrow procedure to cure this problem, the implementation of that procedure is purely discretionary. Also the exemption requires the filing of a TCR within 30-days of any contact with the Commission, regardless of any other factor. If this 30-day deadline is missed, then the Commission would not have any discretion to waive the new rule, regardless of hardships faced by the whistleblower, the quality of his or her information, the reason for not filing a TCR prior to other contact with the Commission, or the contribution the whistleblower made to the collection of restitution for investors.

Thank you for your careful attention to these matters.

Respectfully submitted,

/s/Stephen M. Kohn
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Jane Norberg, Chief, Office of the Whistleblower

ENCLOSURES: Supporting Materials for Kohn, Kohn and Colapinto's Comments on SEC Proposed Rule 9(e)

APPENDIX A
TEXT OF THE CURRENT PRPOSED 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.

ENCLOSURE

SUPPORTING MATERIALS
FOR
KOHN, KOHN AND COLAPINTO'S COMMENTS ON
SEC PROPOSED RULE 9(E)

KOHN, KOHN, AND COLAPINTO, LLC
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PROPOSED AMENDMENT TO TO RULE 9(e)

§ 240.21F-9 Procedures for submitting original information.

(a) To submit information in a manner that satisfies § 240.21F-2(b) and (c) 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 webpage 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 (c).
(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), (2), or (3) of this section that your information is true and correct to the best of your knowledge and belief.

* * * * *

(e) You must follow the procedures specified in paragraphs (a) and (b) 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.

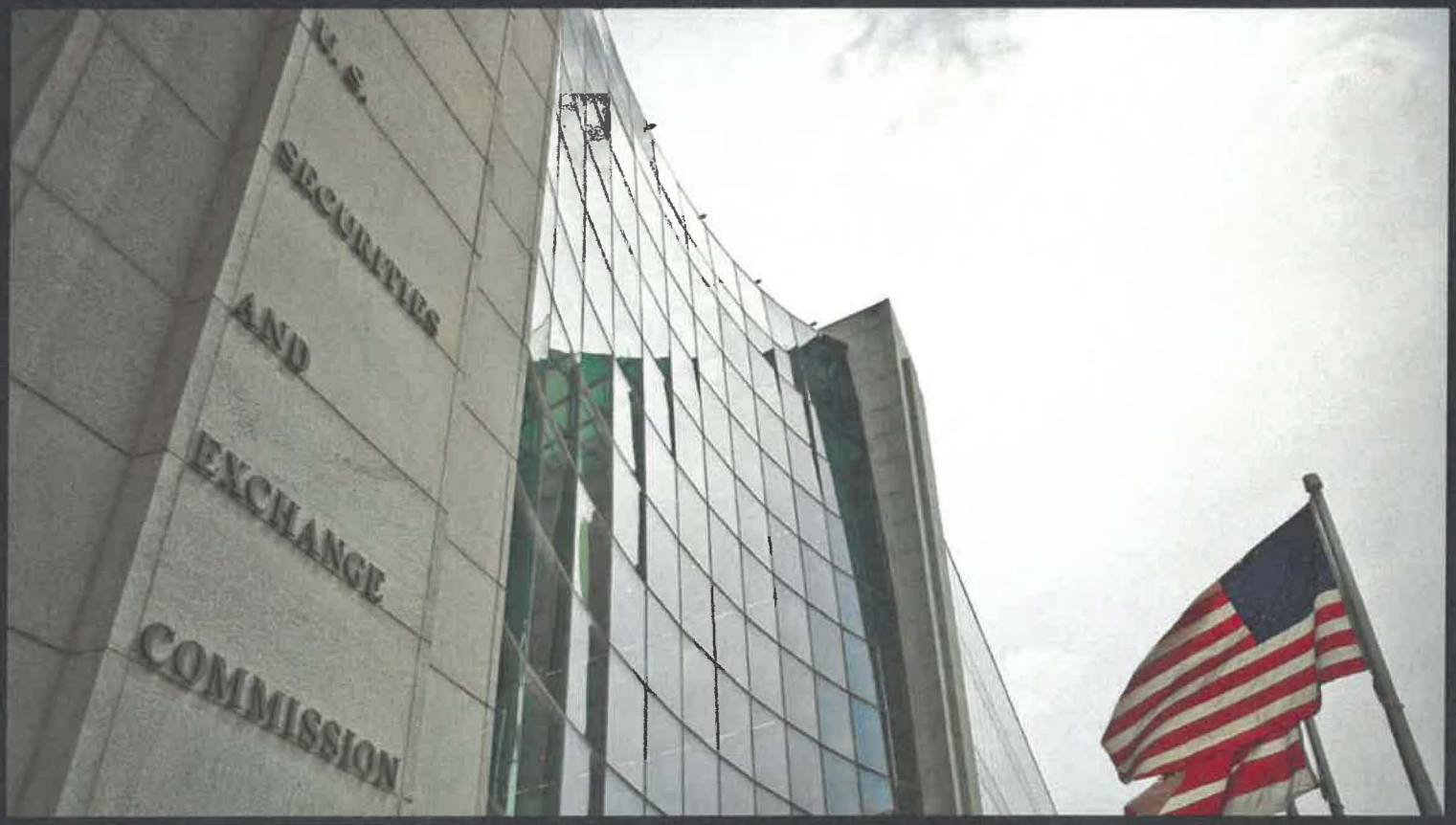
BOUNTY PROGRAM REPORT

U.S. Securities and Exchange Commission

Office of Inspector General

Office of Audits

Assessment of the SEC's Bounty Program



March 29, 2010
Report No. 474

Background and Objectives

Background

There is evidence that bounty programs are an effective tool to encourage whistleblowers to come forward and provide incentives for outside entities to bring complaints about possible illegal activity. We identified two government agencies, the Internal Revenue Service (IRS) and Department of Justice (DOJ), that have well-defined whistleblower functions.

Section 21A(e) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78u-1(e), authorizes the Securities and Exchange Commission (SEC or Commission) to award a bounty to a person who provides information leading to the recovery of a civil penalty from an insider trader,[1] from a person who tipped information to an insider trader, or from a person who directly or indirectly controlled an insider trader. All bounty determinations, including whether, to whom, and in what amount to make payments, are within the sole discretion of the SEC. However, the total bounty may not currently exceed 10 percent of the amount recovered from a civil penalty pursuant to a court order.

Section 21A(e) of the Exchange Act was added by the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSEA), Pub L. No. 100-704. ITSEA embodied a series of statutory changes that Congress viewed as necessary at that time to augment existing methods of detection and punishment of insider trading behavior. Particularly in light of the stock market crash in October 1987, Congress viewed the changes as an essential ingredient to restore the confidence of the public in the fairness and integrity of the securities markets.

The Commission has adopted regulations to provide for administration of the process for making bounty requests. These regulations are included in the Code of Federal Regulations, Title 17: *Commodity and Securities Exchanges, Part 201- Rules of Practice, Subpart C-Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934,* Sections 201.61-201.68. The SEC bounty program regulations require that applications be in writing, and that applications be filed within 180 days after the entry of the court order requiring payment of the insider trading penalty from which the bounty is to be paid.[2] An application for a bounty must contain, among

[1] The term "insider trading" refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust or confidence, while in possession of material, nonpublic information about the security. Insider trading violations may also include tipping such information, securities trading by the person tipped and security trading by those who misappropriate such information. (http://www.sec.gov/answers/bounty.htm.)

[2] 17 C.F.R. §§ 201.62 and 201.63.

Through discussions with Commission officials responsible for drafting the recent proposed legislation to expand the SEC's authority to reward whistleblowers, we learned that the Commission met extensively with representatives from both DOJ and the IRS to identify best practices for revamping the SEC's current bounty program. Commission officials stated they plan to incorporate many of these best practices into implementing regulations and policies and procedures, as appropriate, upon passage of the proposed legislation. Until such time as this legislation may be passed, the Commission should begin to incorporate best practices we identified from DOJ and the IRS.

Recommendation 8:

We recommend that the Division of Enforcement incorporate best practices from the Department of Justice and the Internal Revenue Service into the Securities and Exchange Commission bounty program with respect to bounty applications, analysis of whistleblower information, tracking of whistleblower complaints, recordkeeping practices, and continual assessment of the whistleblower program.

Management Comments. Concur. See Appendix V for management's full comments.

OIG Analysis. We are pleased that Enforcement concurred with this recommendation.

Recommendation 9:

We recommend that the Division of Enforcement set a timeframe to finalize new policies and procedures for the Securities and Exchange Commission bounty program that incorporate the best practices from Department of Justice and the Internal Revenue Service, as well as any legislative changes to the program.

Management Comments. Concur. See Appendix V for management's full comments.

OIG Analysis. We are pleased that Enforcement concurred with this recommendation.

Management Comments

MEMORANDUM

TO: H. David Kotz, Inspector General, Office of Inspector General

FROM: Robert Khuzami, Director, Division of Enforcement

RE: Enforcement's Response to the Office of Inspector General's Report, Assessment of SEC Bounty Program, Report No. 474

DATE: March 24, 2010

This memorandum is in response to the Office of Inspector General's Draft Report No. 474, entitled *Assessment of SEC Bounty Program*. Thank you for the opportunity to review and respond to this report. We concur in the report's recommendations.

Early last year, Chairman Schapiro directed staff to begin working to establish a world-class whistleblower program. To that end, we conducted an extensive review of whistleblower programs at other governmental agencies and the Financial Industry Regulatory Authority (FINRA) to identify best practices for administering a successful program at the SEC. Our effort resulted in legislation currently under consideration by Congress that would create a new, more-comprehensive whistleblower program related to all securities violations.

As a result of our review, and as noted in your report, Division leadership was aware, prior to the audit, of the issues with the insider trading bounty program raised in your report. The Division's independent findings, and its plans for developing a new whistleblower program, are consistent with those set forth in the report.

In addition, it is not surprising that only a small percentage of insider trading cases have been initiated as a result of tips submitted through the insider trading bounty program. The vast majority of insider trading cases arise from routine surveillance performed by the SEC staff and the Self-Regulatory Organizations (SROs), such as FINRA and the stock exchanges, and not from tips submitted by members of the public. For example, of the 37 insider trading actions brought by the Commission in FY 2009, 31 were the result of surveillance by the SROs or the Division itself. We believe the principal reason that the current bounty program has not yielded more rewards derives more from its relatively narrow scope and the confidential nature of insider trading violations than from the procedural shortcomings we recognize exist. Notwithstanding the program's limitations, the Commission has an excellent track record of paying eligible claimants, as each award has been for the maximum amount allowed by the bounty statute

The proposed whistleblower legislation was drafted principally to broaden the nature of wrongdoing for which whistleblowers could receive a bounty. In our efforts to craft this new program, however, great care was taken to address and avoid problems identified with the insider trading bounty program, including our desire to establish a formal program with dedicated staff and state-of-the-art policies and procedures. If the proposed legislation is enacted, the new

whistleblower program would not be an extension of the current insider trading bounty program. Instead, it would subsume the existing program and, thereby, constitute an entirely new program based on the structure and best practices of other successful whistleblower programs.

We also have taken other steps that we believe will address some of the recommendations. As indicated in the Draft Strategic Plan for 2010-2015, the Commission is centralizing the process for receiving, reviewing, and acting upon tips, complaints and referrals (TCRs) so they can be handled consistently and appropriately, including through examinations or enforcement investigations. In connection with this effort, the Commission hired the MITRE Corporation to assist in revamping our intake, triage and analysis of TCRs, and has adopted a new agency-wide policy for handling TCRs, embodied in *Tips, Complaints, and Referrals Intake Policy*, Securities Exchange Commission Regulation 3-2, March 10, 2010 (SECR 3-2). The Division has adopted supplemental guidance to implement this policy. Division of Enforcement, *Interim Policies and Procedures for Handling Tips, Complaints and Referrals (TCRs)* (March 24, 2010).

The Division's new Office of Market Intelligence (OMI) will consolidate the Division's handling of TCRs in accordance with SECR 3-2 and our supplemental guidance. The principal functions of OMI will include coordination, consolidation and management of the Division's processes with respect to TCRs that come to the Division's attention from any internal or external source. Tips received through the insider trading bounty program will be covered by the Commission's new TCR policy, as will the tips and complaints covered by the proposed new whistleblower legislation. We have considered OIG's report in light of these developments.

While we concur with the recommendations, it is our hope that pending legislation before the Congress, as noted above, will create a new program wholly replacing the current one. In such a case, we believe it would be appropriate to address many of the recommendations below through enactment of policies and procedures involving the agency's new authority as opposed to embarking upon modifications of the current insider trading bounty program, which we hope will soon be superseded.

Recommendation 1 relates to communicating information about the bounty program, both externally and internally. We concur and will develop a plan consistent with this recommendation.

Recommendation 2 relates to the development of a form for requesting information from whistleblowers. We concur with this recommendation. In connection with the revamped TCR system, the electronic form in which information is collected will be updated, and we expect to have a form directed specifically to whistleblowers.

Recommendation 3 relates to policies for follow-up with whistleblowers to obtain any additional information they may have. We concur with this recommendation. The Division will be developing processes and procedures for follow up with whistleblowers.

Recommendation 4 relates to the criteria for recommending the award of bounties. We concur with this recommendation. The Division will develop criteria consistent with this recommendation.

Recommendation 5 relates to the examination of ways to provide notice to whistleblowers as to the status of their bounty requests. We concur with this recommendation. The Division will work with the Office of General Counsel to address this recommendation.

Recommendation 6 relates to controls for tracking tips and complaints from whistleblowers. We concur with this recommendation. The Commission's TCR project has already focused on particular capabilities necessary to track whistleblower tips and complaints, and the system currently in development will incorporate controls to ensure that tips are reviewed and track whether timely decisions are made whether to pursue tips.

Recommendation 7 relates to maintenance of whistleblower complaint files. We concur with this recommendation. The Division will adopt procedures for creation and retention of information relevant to a whistleblower complaint.

Recommendation 8 relates to incorporation of best practices from the Department of Justice and the Internal Revenue Service with respect to bounty applications. We concur with this recommendation. As the report notes, the Division has already met with these agencies to identify best practices. The Division will adopt best practices for the existing insider trading bounty program or will incorporate such practices into any new program should the proposed legislation be enacted.

Recommendation 9 relates to formulation of a timeline for policies and procedures for the existing bounty program. We concur with this recommendation. The Division will develop an appropriate timeline.

SENATE REPORT
NO. 111–176 (2011)

Calendar No. 349

111TH CONGRESS, 2d Session | SENATE | REPORT 111–176

THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

APRIL 30, 2010.—Ordered to be printed

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 3217]

The Committee on Banking, Housing, and Urban Affairs, having considered the original bill (S. 3217) to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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municipal securities dealer to arbitrate any dispute between them. This provision was included in the Treasury Department's legislative proposal.[172]

There have been concerns over the past several years that mandatory pre-dispute arbitration is unfair to the investors. In a letter to Chairman Dodd and Ranking Member Shelby, AARP expressed support for this provision. In listing some of the problems with mandatory pre-dispute arbitration, the letter identified "high upfront costs; limited access to documents and other key information; limited knowledge upon which to base the choice of arbitrator; the absence of a requirement that arbitrators follow the law or issue written decisions; and extremely limited grounds for appeal."[173]

The North American Securities Administrators Association also supports this provision, stating in testimony that a "major step toward improving the integrity of the arbitration system is the removal of the mandatory industry arbitrator. This mandatory industry arbitrator, with their industry ties, automatically puts the investor at an unfair disadvantage."[174] The Consumer Federation of America,[175] AARP,[176] and the Public Investors Arbitration Bar Association support this approach.[177]

Section 922. Whistleblower protection

The Whistleblower Program, established and administered by the Securities and Exchange Commission, is intended to provide monetary rewards to those who contribute "original information" that lead to recoveries of monetary sanctions of $1,000,000 or more in criminal and civil proceedings. The genesis of the program is found in President Obama's June 2009 financial regulatory reform proposal.[178] A similar provision was included in the House of Representatives financial reform bill (H.R. 4173).

The Whistleblower Program aims to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated securities laws and recover money for victims of financial fraud. In a testimony for the Senate Banking Committee, Certified Fraud Examiner and Madoff whistleblower Harry Markopolos testified in support of creating a strong Whistleblower Program. He cited statistics showing the efficiency of Whistleblower Programs: "whistleblower tips detected 54.1% of uncovered fraud schemes in public companies. External auditors, and the SEC exam teams would certainly be considered external auditors, detected a mere 4.1% of uncovered fraud schemes. Whistleblower tips were 13 times more effective than external audits, hence my recommendation to the SEC to encourage

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[172] *FACT SHEET: ADMINISTRATION'S REGULATORY REFORM AGENDA MOVES FORWARD; Legislation for Strengthening Investor Protection Delivered to Capitol Hill,* U.S. Department of the Treasury, Press Release, July 10, 2009, *www.financialstability.gov.*

[173] AARP, letter to Senators Dodd and Shelby, November 19, 2009.

[174] *Enhancing Investor Protection and the Regulation of Securities Markets—Part II: Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs,* 111th Congress, 1st session, p.18 (2009) (Testimony of Mr. Fred Joseph).

[175] Consumer Federation of America (November 10, 2009), "CFA Applauds Introduction of Senator Dodd's Financial Reform Package," Press release, *www.consumerfed.org.*

[176] AARP, letter to Senators Dodd and Shelby, November 19, 2009.

[177] The following article references the Public Investors Arbitration Bar Association's support for this provision: *"Death Knell For Mandatory Arbitration,"* Helen Kearney, *On Wall Street,* August 1, 2009.

[178] *Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward; Legislation for Strengthening Investor Protection Delivered to Capitol Hill,* U.S. Department of the Treasury, Press Release, July 10, 2009. Available at *http://www.financialstability.gov.*

the submission of whistleblower tips." [179] In his letter to Senator Dodd, SEC Inspector General David Kotz also recommended a similar Whistleblower Program.[180]

Recognizing that whistleblowers often face the difficult choice between telling the truth and the risk of committing "career suicide", the program provides for amply rewarding whistleblower(s), with between 10% and 30% of any monetary sanctions that are collected based on the "original information" offered by the whistleblower. The program is modeled after a successful IRS Whistleblower Program enacted into law in 2006. The reformed IRS program, which, too, has a similar minimum-maximum award levels and an appeals process,[181] is credited to have reinvigorated the earlier, largely ineffective, IRS Whistleblower Program. The Committee feels the critical component of the Whistleblower Program is the minimum payout that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud.

We also note a recent report of the current SEC insider-trading Whistleblower Program by the Office of Inspector General of SEC. Since the inception of the program in 1989, there have been a total of only seven payouts to five whistleblowers for a meager total of $159,537.[182] In the report, the Inspector General recommends several important guidelines that any current or future SEC Whistleblower Programs should follow, including: development of specific criteria for bounty awards (including a provision to award whistleblowers that partly rely upon public information), development of tips and complaints tracking systems, incorporating best practices from DOJ and IRS's Whistleblower Programs, and establishment of a timeframe for the new policies.

"Original information" is defined as information that is derived from the independent analysis or knowledge of the whistleblower, and is not derived from an allegation in court or government reports, and is not exclusively from news media. In circumstances when bits and pieces of the whistleblower's information were known to the media prior to the emergence of the whistleblower, and that for the purposes of the SEC enforcement [183] the critical components of the information was supplied by the whistleblower, the intent of the Committee is to require the SEC to reward such person(s) in accordance with the degree of assistance that was provided. The rewards are to be from the Investor Protection Fund, which receives funds from sanctions collected based on civil enforcement and from other funds within SEC that are otherwise not distributed to investors (i.e., unused disgorgement funds). Whenever a whistleblower or whistleblowers tip leads the SEC to collect sanctions and penalties that are determined to be distributed to the victims of the fraud, the intent of the Committee is to reward

[179] "Oversight of the SEC's Failure to Identify the Bernard L. Madoff Ponzi Scheme and How to Improve SEC Performance: Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs", 111th Congress, 1st session, p.33 (2009) (Testimony of Mr. Harry Markopolos).

[180] Inspector General H. David Kotz, letter to Senator Dodd, October 29, 2009.

[181] Like the IRS program, the new SEC Whistleblower Program provides for an appeals process, the appropriate court of appeals will review the determination made by the Commission in accordance with section 706 of title 5 of U.S. Code (i.e., abuse of discretion).

[182] "Assessment of the SEC's Bounty Program", Office of Inspector General, U.S. Securities and Exchange Commission, Report No. 474. March 29, 2010.

[183] Same would apply to cases when SEC forwards criminal cases to DOJ that lead to penalties and sanctions.

the whistleblower prior or at the same time as paying such victims, recognizing that were it not for the whistleblower's actions, there would have been no discovery of the harm to the investors and no collection of any sanctions for their benefit.

The SEC has discretion in determining the amount and whether or not a whistleblower is eligible to be awarded. In cases when whistleblowers feel that the SEC had abused its discretion in determining the amount of the award, they have the right to appeal, within 30 days of the decision to a court of appeals. The court is to review the determination in accordance with section 706 of title 5 of U.S. Code. The Committee feels that this review process will significantly contribute to make the program reliable for persons who are contemplating whether or not to blow the whistle on fraud. It will add to the notion of enforceable payout. The Committee, having heard from several parties involved in whistleblower related cases, has determined that enforceability and relatively predictable level of payout will go a long way to motivate potential whistleblowers to come forward and help the Government identify and prosecute fraudsters. Whistleblowers who are employees of an appropriate regulatory agency, DOJ, SROs, PCAOB, accountants in certain circumstances, or a law enforcement organization are generally not eligible for an award. Also not eligible are whistleblowers who are convicted of a criminal violation related to the case at hand.

The Committee intends for this program to be used actively with ample rewards to promote the integrity of the financial markets.

The program also requires the SEC to annually report back to Congress, among other things, with details regarding the number and types of awards granted. It also provides for various protections for whistleblowers, specifically barring employers to discharge, demote, suspend, threaten, harass directly or indirectly, or in any other manner discriminate. The provision also makes it unlawful to knowingly and willfully make any false, fictitious or fraudulent statement or representation, or use any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry. Following the enactment of the Act, the SEC will have 270 days to issue final regulations implementing the provisions of the Act.

Section 923. Conforming amendments for whistleblower protection

Section 923. contains conforming amendments for whistleblower protection.

Section 924. Implementation and transition provisions for whistleblower protection

Section 924 contains implementation and transition provisions for whistleblower provisions. The section directs the SEC to issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934 within 270 days within enactment of the Act.

Section 925. Collateral bars

Section 925 gives the SEC the authority to bar individuals from being associated with various registered securities market participants after violating the law while associated in only one area.

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[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, § 226b.

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. 1203]
[Public Law 213]

Private suits arising out of frauds against U. S.

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:

Jurisdiction of district courts.

"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.

Institution of 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.

Withdrawal.

Notice to U. S.

"(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

Appearance.

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

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.

"(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).

Stay of further proceedings.

Notice to Attorney General.

"(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 if suit 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."

Award when suit not carried on by U. S.

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.

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

Ranks and ratings in Women's Reserve.

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and consistency and to eliminate unnecessary words. The words "officer or employee of the Government or a member of an armed force" are substituted for "officer in the civil, military, or naval service of the United States" for consistency in the revised title and with other titles of the Code. The words "upon or against the Government of the United States, or any department of the United States, or any department or officer thereof" are omitted as surplus. In clause (2), the word "knowingly" is substituted for "knowing the same to contain any fraudulent or fictitious statement or entry" to eliminate unnecessary words. The words "record or statement" are substituted for "bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition" for consistency in the revised title and with other titles of the Code. In clause (3), the words "conspires to" are substituted for "enters into any agreement, combination, or conspiracy" to eliminate unnecessary words. The words "of the United States, or any department or officer thereof" are omitted as surplus. In clause (4), the words "charge", "or other", and "to any other person having authority to receive the same" are omitted as surplus. In clause (5), the words "document certifying receipt" are substituted for "certificate, voucher, receipt, or other paper certifying the receipt" to eliminate unnecessary words. The words "arms, ammunition, provisions, clothing, or other", "to any other person", and "the truth of" are omitted as surplus. In clause (6), the words "arms, equipments, ammunition, clothes, military stores, or other" are omitted as surplus. The words "member of an armed force" are substituted for "soldier, officer, sailor, or other person called into or employed in the military or naval service" for consistency with title 10. The words "such soldier, sailor, officer, or other person" are omitted as surplus.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2009—Subsecs. (a), (b). Pub. L. 111–21, §4(a)(1), (2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to liability for certain acts and defined "knowing" and "knowingly", respectively.

Subsec. (c). Pub. L. 111–21, §4(a)(4), substituted "subsection (a)(2)" for "subparagraphs (A) through (C) of subsection (a)".

Pub. L. 111–21, §4(a)(2), (3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Prior to amendment, text read as follows: "For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded."

Subsecs. (d), (e). Pub. L. 111–21, §4(a)(3), redesignated subsecs. (d) and (e) as (c) and (d), respectively.

1994—Subsec. (e). Pub. L. 103–272 substituted "1986" for "1954".

1986—Subsec. (a). Pub. L. 99–562, §2(1), designated existing provisions as subsec. (a), inserted subsec. heading, and substituted "Any person who" for "A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person" in introductory provisions.

Subsec. (a)(1). Pub. L. 99–562, §2(2), substituted "United States Government or a member of the Armed Forces of the United States" for "Government or a member of an armed force".

Subsec. (a)(2). Pub. L. 99–562, §2(3), inserted "by the Government" after "approved".

Subsec. (a)(4). Pub. L. 99–562, §2(4), substituted "control of property" for "control of public property" and "by the Government" for "in an armed force".

Subsec. (a)(5). Pub. L. 99–562, §2(5), substituted "by the Government" for "in an armed force" and "true;" for "true; or".

Subsec. (a)(6). Pub. L. 99–562, §2(6), substituted "an officer or employee of the Government, or a member of the Armed Forces," for "a member of an armed force" and "property; or" for "property."

Subsec. (a)(7). Pub. L. 99–562, §2(7), added par. (7).

Subsecs. (b) to (e). Pub. L. 99–562, §2(7), added subsecs. (b) to (e).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–21, §4(f), May 20, 2009, 123 Stat. 1625, provided that: "The amendments made by this section [amending this section and sections 3730 to 3733 of this title] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment, except that—

"(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) that are pending on or after that date; and

"(2) section 3731(b) [probably should be section 3731] of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to cases pending on the date of enactment."

INCREASED PENALTIES FOR FALSE CLAIMS IN DEFENSE PROCUREMENT

Pub. L. 99–145, title IX, §931(b), Nov. 8, 1985, 99 Stat. 699, provided that: "Notwithstanding section 3729 of title 31, United States Code, the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of $2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action."

[Section 931(c) of Pub. L. 99–145 provided that section 931(b) is applicable to claims made or presented on or after Nov. 8, 1985.]

§ 3730. Civil actions for false claims

(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after

it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government[1] Accounting Office report, hearing, audit, or investigation, or from the news

[1] So in original. Probably should be "General".

media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) RELIEF FROM RETALIATORY ACTIONS.—

(1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

WHISTLEBLOWER 21276-13W

V.

COMMISSIONER OF INTERNAL REVENUE,

144 T.C. No. 15 (2015)

144 T.C. No. 15

UNITED STATES TAX COURT

WHISTLEBLOWER 21276-13W, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

WHISTLEBLOWER 21277-13W, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 21276-13W, 21277-13W. Filed June 2, 2015.

P-H was arrested for participating in a conspiracy to launder money. To minimize his punishment, P-H informed Government agents, including Internal Revenue Service (IRS) agents, that a foreign business (the Targeted Business) assisted U.S. taxpayers in evading Federal income tax. P-H told the Government agents that the Targeted Business had no presence in the United States and instructed its personnel to stay out of the United States. Although he did not have documentation sufficient to inculpate the Targeted Business, P-H was aware of an individual who did.

Because the individual (X) was outside the United States, P-H and P-W designed a plan to induce him to come to the United States. In executing the plan, P-W met with X and persuaded him to enter the United States. Upon entering the United States, X was arrested. While in custody, X agreed to assist the United States in its pursuit of the Targeted Business. After his release, X tried to back out of his agreement. But after meeting with P-H, X agreed to follow through

on his commitment. In part because of X's assistance, the Targeted Business was indicted, pleaded guilty, and paid the United States approximately $74 million.

Ps filed separate Forms 211, Application for Award for Original Information, with the IRS Whistleblower Office, seeking awards under I.R.C. sec. 7623(b). The forms were filed after the Targeted Business pleaded guilty and paid the United States $74 million.

Upon receipt, the IRS sent Ps' Forms 211 to its Ogden, Utah, Service Center, where a classifier noted that the forms were filed after the United States collected proceeds from the Targeted Business. On that basis, the Whistleblower Office rejected Ps' award applications and sent Ps separate award determination letters stating that no proceeds had been collected using the information Ps submitted.

The IRS asserts that the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, div. A, sec. 406(b), 120 Stat. at 2959 (TRHCA sec. 406(b)), provides the Whistleblower Office with exclusive discretion to either investigate the taxpayer or refer the information provided by the whistleblower to an IRS operating division. The IRS further asserts that under TRHCA sec. 406(b) a whistleblower is ineligible for an I.R.C. sec. 7623(b) award if he/she provides the information to an operating division of the IRS before submitting the information, via a Form 211, to the Whistleblower Office.

Held: TRHCA sec. 406(b) does not endow the Whistleblower Office with exclusive authority to investigate the individual or entity that is the subject of an application for an award. The fact that Ps supplied their information to other Federal agencies, including an IRS operating division, before submitting the information to the Whistleblower Office on Form 211 does not, as a matter of law, render Ps ineligible for an award under I.R.C. sec. 7623(b).

Sealed,[1] for petitioners.

Richard L. Hatfield, John T. Arthur, and Jonathan D. Tepper, for respondent.

OPINION

JACOBS, Judge: In these consolidated cases petitioners, husband and wife, seek whistleblower awards authorized by section 7623(b),[2] asserting each brought to the Secretary's attention information which resulted in the collection of unpaid Federal income tax. Each petitioner filed a Form 211, Application for Award for Original Information, with the Internal Revenue Service (IRS) Whistleblower Office (Whistleblower Office) when they learned of the whistleblower award program from one of the Government agents to whom they provided information. The Whistleblower Office summarily rejected each petitioner's claim on the basis that "additional tax, penalties, interest or other proceeds" had been collected before each petitioner filed his/her Form 211. On the basis of its determination

[1]The names of petitioners' counsel have been omitted in furtherance of protecting petitioners' identities.

[2]Unless otherwise indicated, all section references are to the Internal Revenue Code as amended.

that petitioners' claims were untimely, the Whistleblower Officer did not review, investigate, or evaluate the merits of petitioners' claims.

The documents in petitioners' administrative files were insufficient for the Court to conduct an effective review of this matter. The only documents in each petitioner's administrative file were (1) the Form 211, (2) an acknowledgment of the receipt of the Form 211 assigning a claim number to the respective petitioner, (3) a letter informing the respective petitioner that his/her claim was still under consideration, (4) a Form 211 Classification Checksheet, and (5) a denial letter stating that the information provided did not result in the collection of proceeds.

The Court held a partial trial at a special session on November 13, 2014, in Washington, D.C., in order to enable the Court to determine (1) what information, disclosure, and/or action, if any, petitioners provided to employees, agents, and/or officers of the United States in detecting underpayments of tax and/or detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same and (2) whether that information, disclosure, and/or action satisfies the requirements of section 7623(b). Undisputed facts were revealed at the partial trial and are set forth infra.

Background

I. Petitioner Husband

Petitioner husband assisted individuals who were engaged in illegal activities. In 2009 he was arrested at his Florida home, having been indicted as a coconspirator in a conspiracy to launder funds from the sale of pirated musical compact discs. He was taken to a local detention facility. To minimize his punishment, he agreed to cooperate with FBI, IRS, and other Government agents by providing them with information regarding the structure of various entities his clients used in their illegal activities. After spending four weeks in the local detention facility, he was transferred to another facility in Philadelphia, Pennsylvania. In January 2010, petitioner husband pleaded guilty and entered into an agreement with the Department of Justice to provide truthful, complete, and accurate information and testimony. The agreement stated that "[t]he defendant understands that if he testifies untruthfully in any material way he can be prosecuted for perjury" with respect to both his criminal activities and "any other crimes about which he has knowledge."

II. The Targeted Business

While in detention in Philadelphia, petitioner husband informed the Government agents that a foreign business (the Targeted Business) assisted U.S.

taxpayers in evading Federal income tax. Through his acquaintance with several of the officers of the Targeted Business, petitioner husband became aware that the Targeted Business was organized like a general partnership, with no liability protection for its owners. Petitioner husband believed that were the United States to bring criminal charges against the Targeted Business, its partners would settle in order to avoid the loss of business to the Targeted Business, as well as to avoid personal liability. Petitioner husband told the Government agents that to avoid potential U.S. prosecution the Targeted Business conducted no operations within the United States and instructed its partners, officers, and employees not to come to the United States.

Petitioner husband did not have documentation sufficient to inculpate the Targeted Business, but he was aware of a senior officer of the Targeted Business (X) who did. Petitioner husband believed he could devise a plan to lure X to the United States, and he did.

III. X

Petitioner husband had met X when X was an employee of another entity. X had referred several individuals to petitioner husband for business advice. Eight of the individuals referred to petitioner husband were U.S. taxpayers. X demanded a kickback, ranging from $1,500 to $2,500 per client referral. Petitioner husband

resented paying kickbacks to X , but he did so because the amounts he received from the referred clients were substantial.

Petitioner husband believed X would disregard the Targeted Business' admonition not to come to the United States if given sufficient financial motivation. Petitioner husband further believed that if X came to the United States, Federal law enforcement agents could arrest him, and to "save his own skin" X would provide information which could be used to indict the Targeted Business.

> We were very close, I knew that he is--even that he's a super sports guy and * * * [triathlete]--whatever, he's a weak person. Like, he is not a strong person. He will fold and give up and work with the U.S. government. That's one thing I knew about him. And the other thing I knew about him, that he was very greedy and he was open to kickbacks, obviously, what we introduced here, and that he was very vulnerable to malice. So, when we throw the bone, he will bite the bone. And when we have him, he will, excuse my English, spill his guts.

IV. The Plan

In 2010 petitioners met with U.S. Government agents (including FBI, ICE, and IRS agents), as well as British agents from the Metropolitan Police Service (Met), to formulate a plan to entice X to enter the United States. The plan was based on a transaction petitioners had used for one of petitioner husband's clients and with which X was familiar. X would be told that one of petitioner husband's

clients had embezzled funds which were used to purchase an aircraft. As a reward for arranging financing to purchase the plane, petitioner husband "received" $1.2 million. X would be told that petitioners held the $1.2 million in a Bahamian bank account to avoid payment of U.S. tax and that they wanted to move the money into a new bank account which would be held in the name of an "old boarding school friend" of petitioner husband (beneficial owner). The beneficial owner to be introduced to X would, in reality, be a Met agent. X would be told that petitioners wanted him to assist them in transferring the money, and in exchange for that assistance, X would receive $40,000.

V. The Sting

Petitioner husband was involved in the drafting of all paperwork required to make it appear that an aircraft had been purchased with financed money. He then contacted X, and told him petitioners were in a dire situation and that it was imperative for them to meet. X was told to meet petitioner wife in England because petitioner husband could not travel internationally after his arrest. X knew, but apparently was not concerned, about petitioner husband's arrest. X had met petitioner wife previously, and he trusted her.

In February 2010 petitioner wife flew to England to meet X. Agreeing to meet X was difficult for petitioner wife, especially because her husband's arrest had taken its toll on their marriage.

> I was about 20 pounds less. I was scared. I was nervous.* * * It was obviously very important that I do a good job. So, I had to fly by myself. Agents didn't fly with me, so I went to * * *. Obviously, I was in very bad shape, because I had to deal with * * * [petitioner husband's arrest] situation.

Petitioner wife arrived in England the day before her scheduled meeting with X. She met with Federal agents who, after checking her hotel room for "bugs", discussed her upcoming meeting with X. After speaking with the agents, she walked with them to the meeting place, a popular hotel lounge. Petitioner wife was informed that approximately 10 American and British agents would be in the lounge during the meeting. Petitioner wife and the agents next went to the U.S. Embassy, where she was instructed to leave the lounge if she believed something was amiss. Petitioner wife spent the remainder of the day rehearsing what she would say to X. Specifically, she needed to explain how the plan would work, state that the $1.2 million came from embezzled money and that petitioners had not paid tax on that money, tell X about the beneficial owner, and make arrangements for X to meet the beneficial owner at another meeting.

On the morning of the meeting, the Federal agents attached a recording device to petitioner wife and placed a backup recorder in her purse. Petitioner wife then went to the lounge and waited for X to arrive. When X arrived 10 to 15 minutes later, he and petitioner wife conversed in a foreign language. Over the course of an hour, petitioner wife was able to complete her talking points and record the incriminating conversation. After the meeting, petitioner wife flew to Philadelphia and spent several days reviewing the English translation of the transcript of her conversation with X to ensure accuracy.

For several weeks no one heard from X. The Government agents began to be concerned that, as petitioner husband put it, X "got totally cold feet." By this point, the Government agents had come to trust petitioner husband. Petitioner husband's passport was returned to him, and he flew, alone, to the Cayman Islands to meet X in order to "rein him back in". Petitioner husband and X met, and X agreed to meet the beneficial owner.

Petitioner wife again traveled to England to meet X. She followed the same procedure as in the first meeting. The same two types of recording devices were planted on her, and she met X at the same lounge as in the first meeting.

Petitioner wife entered contact information with respect to the beneficial owner in her cellular telephone before her second meeting with X because:

> the plan was that I arrive a little early, have a little warmup talk with * * * [X], and then I would get a phone call from * * * [the beneficial owner] and I would say "Oh, he's coming," and even show it in the phone and, you know, make it very real.

When the would-be beneficial owner arrived, he and X had an immediate rapport. The beneficial owner's backstory had been designed to appeal to X's interests. Importantly, both the beneficial owner and X were triathletes. X mentioned that a triathlon in the Bahamas was upcoming and that he and the beneficial owner should compete together. They ultimately discussed the movement of the $1.2 million to a new bank account, the fact that the $1.2 million came from embezzled money, and that petitioners had not paid tax on it.

Unfortunately, neither the recording device worn by petitioner wife nor the one in her purse worked; therefore, the incriminating conversation with X was not recorded. Consequently, over a period of two months, petitioner husband called X in an effort to get him to make incriminating statements. Eventually, petitioner husband got two recordings in which X discussed the fact that the $1.2 million came from embezzled money, that petitioners had not paid tax on it, and that X would assist in the movement of the $1.2 million to a new bank account. Petitioner husband was concerned that X would realize something was amiss,

given the efforts made to convince him to say certain things (i.e., "embezzlement" and "untaxed"), but petitioner husband's fears proved unfounded.

The next step was to draw X to the United States. Since X had been instructed by the Targeted Business to avoid entering the United States, a certain amount of enticement was necessary. Petitioner husband contacted X and convinced him to fly to Florida to meet the beneficial owner before traveling to the triathlon in the Bahamas. He told X that the beneficial owner would give him $15,000 in cash as a downpayment when they met. X agreed to fly to Florida where he was arrested.

After a week in custody, X agreed to assist the Government agents in their pursuit of the Targeted Business. X's arrest was kept quiet so as not to alert the Targeted Business; eventually he was released and permitted to return abroad. Upon his return, X informed one of the Targeted Business' owners that he had been arrested in the United States and that he needed help. When the Government agents learned of X's betrayal, they directed petitioner husband to convince X to follow through on his commitment.

Petitioner husband persuaded X to meet him. Petitioner husband appealed to X's avariciousness by telling him that their meeting was necessary to resolve a number of issues with clients that affected payments to be made to X. Their

meeting was tense. Petitioner husband bluntly laid out X's situation. He told X that if he did not cooperate with U.S. authorities, he would be unable to travel internationally for the rest of his life, because "as soon as you jump over the water, they get you." Petitioner husband used himself as an example of the benefits of cooperation. He explained that the Government agents kept their word, and he warned X that "[i]f you screw them, you're screwed". Ultimately X agreed to cooperate with the Federal authorities.

After X began cooperating with the Government agents, a U.S. attorney's office opened a criminal investigation of the Targeted Business. Often when X provided prosecutors with information, petitioner husband would be asked to confirm its accuracy. During this time petitioner husband met the assistant U.S. attorney leading the case, along with FBI and IRS agents, to discuss the organization and operation of the Targeted Business.

The Targeted Business was indicted, with a subsequent superseding indictment, for conspiring with U.S. taxpayers and others to hide more than $1.2 billion in secret accounts, and the income generated therefrom, from the IRS. The Targeted Business pleaded guilty, as petitioner husband predicted. As part of its guilty plea, the Targeted Business paid the United States approximately $74 million.

Petitioner husband received an email from the lead FBI agent stating "GREAT JOB" with a copy of the indictment attached. Another agent called petitioners to congratulate them. In an attachment to the stipulation of facts filed with this Court, both the lead FBI agent and the assistant U.S. attorney leading the case against the Targeted Business were effusive in their praise of both petitioners, stating:

> The assistance and support of * * * [petitioners] in supporting the investigation was exceptionally helpful * * * In short, but for the work, information, and effort of * * * [petitioners] in assisting the federal government, the government's successful action against * * * [the Targeted Business], as it was carried out, would not have been possible. * * * The information provided by the whistleblower [sic] was essential and substantially contributed to the government's actions against * * * [the Targeted Business] that led to the collection of $74,131,694.42.

The IRS was involved in the pursuit of the Targeted Business from the beginning of the investigation. At the partial trial before this Court, the IRS special agent involved in the investigation of the Targeted Business testified that petitioner husband's cooperation had been essential and the agent acknowledged that there was no "Plan B" for the IRS to pursue the Targeted Business.

VI. Petitioners' Claims for Award

Petitioners were unaware of any whistleblower award program when they began to assist the Government in its pursuit of the Targeted Business. During one of petitioner husband's meetings with FBI, ICE, and IRS agents, one of the agents mentioned that the IRS had a whistleblower award program. Petitioner husband's attorney contacted several of the agents involved, inquiring whether they would object to petitioners' filing claims for award. No one objected to the filing of such claims.

On or about April 16, 2013, petitioners each submitted a Form 211 to the Whistleblower Office. The Whistleblower Office mailed petitioners separate letters on May 7, 2013, notifying them that their Forms 211 had been received and were assigned claim numbers. On or about June 17, 2013, the Whistleblower Office sent petitioners separate letters stating that their claims remained open and were under active consideration.

Upon receipt, petitioners' Forms 211 were sent to the IRS Service Center in Ogden, Utah, for processing. Upon arrival, a Form 211 is reviewed by a clerk who verifies the taxpayer's name, the whistleblower's name, address, and Social Security number, and confirms that it includes an original signature. The form is then entered into the system and forward to a "classifier" to analyze the

whistleblower's allegations and determine whether the application should be accepted for substantive review by an operating division of the IRS or rejected summarily. In the instant matter, the classifier noted that proceeds had been collected from the Targeted Business before petitioners filed their respective Forms 211. On that basis, the classifier rejected petitioners' applications. The classifier sent a Form 211 Classification Checksheet for each petitioner's claim to Cindy Wilde, a team manager in the IRS Ogden Service center. The checksheet includes a number of unexplained coded categories. The checksheet stated "Foreign [entity]--no US tax returns filed--claim is based on information previously provided to US Justice Dept which resulted in settlement agreement in US District court case–claim was filed after the settlement was reached and is therefore ineligible for reward". The checksheet then stated "Results from Classification: L-1010", which was the code instructing the IRS to send rejection letters to petitioners. The checksheet did not explain the rationale for the conclusion stated.

Upon receipt of the Form 211 Classification Checklist, Ms. Wilde noted the L-1010 designation and directed a clerk to generate award determination letters denying petitioners' claims. She did not review any other portion of the checklist. Identical letters to petitioners stated:

> We have considered your application for an award dated 04/10/2013. Under Internal Revenue Code Section 7623, an award may be paid only if the information provided results in the collection of additional tax, penalties, interest or other proceeds. In this case, the information you provided did not result in the collection of any proceeds. Therefore, you are not eligible for an award.
>
> Although the information you submitted did not qualify for an award, thank you for your interests in the administration of the internal revenue laws.
>
> If you have any further questions in regards to this letter, please feel free to contact the Informant Claims Examination Team at 801-620-2169.

The letters did not address the facts and circumstances of petitioners' applications or mention the perceived timing issue. Indeed, apart from the date, each letter consisted of boilerplate language taken from an example letter in the Internal Revenue Manual. No further action was taken by the Whistleblower Office.[3]

On or about August 13, 2013, the IRS sent petitioners the separate award determination letters denying their respective claims for award. Petitioners

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[3]Generally a Form 11369, Confidential Evaluation Report on Claim for Award, is included in the administrative file. The form is prepared for the Whistleblower Office by the IRS operating division that reviews the application and allows the Whistleblower Office to evaluate the merits of the claim before making a final determination. Because petitioners' applications were rejected on the grounds that the Forms 211 were filed late, no such review was made, no Form 11369 was generated, and no Whistleblower Office analyst reviewed the claim.

appealed those determinations to this Court, pursuant to section 7623(b)(4), on September 12, 2013.

Discussion

I. Introduction

The only issue we decide herein is whether petitioners were required as a matter of law to file Forms 211 with the Whistleblower Office before providing information to the IRS to qualify for an award under section 7623(b). We hold they were not.

II. Rejection of Petitioners' Requests for Award as Untimely

A. Respondent's Argument

Petitioners filed their respective Forms 211 three months after the Targeted Business pleaded guilty. According to respondent, information petitioners gave to the IRS special agent before filing their Forms 211 is not "information brought to the Secretary's attention" (whistleblower information) for which petitioners can receive awards under section 7623(b). Respondent concedes that section 7623(b) does not specifically include a timing requirement regarding when whistleblower information must be submitted to the Whistleblower Office. But citing the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, div. A, sec. 406(b), 120 Stat. at 2959 (TRHCA sec. 406), which established the Whistleblower Office,

respondent argues that the Whistleblower Office is the "gatekeeper of information for purposes of nondiscretionary awards under amended section 7623(b)." And respondent asserts that to be eligible for an award under section 7623(b), an individual must submit the whistleblower information to the Whistleblower Office on Form 211 before any IRS action or examination is carried out with respect to that information.

B. Whistleblower Statute Background

Before its amendment in 2006, section 7623 authorized the Secretary to pay "such sums as he deems necessary for--(1) detecting underpayments of tax, and (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same". The regulations promulgated thereunder provided that IRS district and/or service center directors have authority to approve awards "in a suitable amount, for information that leads to the detection of underpayments of tax, or the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same." Sec. 301.7623-1(a), Proced. & Admin. Regs. The regulations further provided that the "amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case." Id. para. (c);

see Michelle M. Kwon, "Whistling Dixie About the IRS Whistleblower Program Thanks to the IRC Confidentiality Restrictions", 29 Va. Tax Rev. 447, 452 (2010).

In 2006 the Treasury Inspector General for Tax Administration (TIGTA) reviewed the whistleblower award program and filed a report entitled "Treasury Inspector General for Tax Administration Report 2006-30-092, The Informants' Reward Program Needs More Centralized Management Oversight (June 2006)" (TIGTA Report). The TIGTA Report found that the whistleblower award program had significantly contributed to the IRS' enforcement efforts and that examinations based on informant information were often more effective and efficient than examinations initiated using the IRS' primary method for selecting returns for examination. TIGTA Report at 1-2. However, the TIGTA Report found that the whistleblower award program was weakened by lack of standardized procedures and managerial oversight. Specifically, the TIGTA Report stated there was no national database of informant claims (instead there were five regional databases, one for each of the five regional units), and 45% of the case files reviewed suffered basic control failures, such as missing copies of forms and missing records of letters sent to informants. The TIGTA Report further stated that TIGTA was unable to determine (1) the justification for the percentage amount awarded to the informants in 32% of the cases reviewed and

(2) the rationale for the decision to reject the informant's claim in 76% of the cases reviewed.

The TIGTA Report found that the whistleblower award program was replete with lengthy delays, averaging 7-1/2 years for an award to be paid to an informant. Id. at 2. The TIGTA Report concluded that while part of this delay was a result of the statute's requirement that rewards be paid only after the additional taxes, fines, and penalties had been collected, the IRS failed to monitor taxpayers' accounts for payment activity for periods longer than a year. The TIGTA Report further concluded that award rejections took an inordinate amount of time, and TIGTA could not determine the reason for delays between the receipt of the whistleblower's claim and review thereof. Id. at 8-9.

The TIGTA Report made two primary recommendations: first, that the IRS centralize management of the whistleblower award program and standardize processing of award claims; and second, that a detailed nationwide database of informant claims be developed and implemented. Id. at 9.

C. The 2006 Amendment and Section 7623(b)

In 2006 Congress enacted TRHCA to strengthen the IRS whistleblower award program. TRHCA sec. 406(b), an uncodified provision, established the IRS

Whistleblower Office to administer the whistleblower award program. TRHCA sec. 406(b) provides:

> (1) In general.--Not later than the date which is 12 months after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance for the operation of a whistleblower program to be administered in the Internal Revenue Service by an office to be known as the "Whistleblower Office" which--
>
> (A) shall at all times operate at the direction of the Commissioner of Internal Revenue and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner of Internal Revenue,
>
> (B) shall analyze information received from any individual described in section 7623(b) of the Internal Revenue Code of 1986 and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office, and
>
> (C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.
>
> (2) Request for assistance.--The guidance issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government.

D. Analysis

Respondent argues the statutory provisions make clear that Congress intended the Whistleblower Office to serve as the gatekeeper of whistleblower

information. According to respondent, the Whistleblower Office is able to maintain the discretion granted it by TRHCA sec. 406(b)(1)(B) to investigate the matter or assign it to an appropriate IRS office only if the whistleblower information is first provided to it. Similarly, respondent maintains that the discretion granted to the Whistleblower Office by TRHCA sec. 406(b)(1)(C) to ask for assistance from the whistleblower would be jeopardized if it did not first receive the information. Respondent posits that this interpretation is consistent with the conclusions of the TIGTA Report emphasizing the need for centralized management of the whistleblower award program.

Respondent's position does not survive close scrutiny. As the TIGTA Report noted, audits under the old whistleblower award program were effective; it was the process by which awards were issued that was problematic. TRHCA sec. 406 addresses this problem. It is clear from the statute that the Whistleblower Office is charged with being the central office for investigating the legitimacy of a whistleblower's award claim, not necessarily the underlying tax issue. To interpret TRHCA sec. 406(b)(1)(B) as respondent does would mean the Whistleblower Office is authorized to open an examination relating to a taxpayer. But the Whistleblower Office has neither sufficient staff nor institutional expertise to investigate taxpayers. See Internal Revenue Manual pt. 1.1.26.1 and 1.1.26.2

(June 8, 2010) (discussing the roles and mission of the Whistleblower Office). And were the Whistleblower Office to expand its staff and expertise sufficiently to conduct examinations relating to taxpayers brought to its attention by whistleblowers, such expansion would duplicate the resources already available in IRS operating divisions.

Moreover, if the Whistleblower Office opened an examination relating to a taxpayer, such an examination would alert the taxpayer that an informant was involved and this would potentially subject the whistleblower to exposure and retaliation, directly contravening the IRS policy of protecting the identities of informants. And we are loath to interpret a statute in a manner that leads to an absurd result. See, e.g., United States v. Granderson, 511 U.S. 39, 47 n.5 (1994); In re Chapman, 166 U.S. 661, 667 (1897).

IRS auditors do not shy away from directly contacting whistleblowers when in need of assistance. See, e.g., Whistleblower 10949-13W v. Commissioner, T.C. Memo. 2014-106, at *3. Tellingly, at the partial trial of these cases, the IRS agent testified that he would not suspend his investigation to permit whistleblowers to file forms with the Whistleblower Office.

Despite respondent's assertions, we are mindful that the Forms 211 which petitioners filed anticipate that a whistleblower may approach an operating

division of the IRS before notifying the Whistleblower Office. See Form 211, Line 8, which instructs the whistleblower to provide the "Name & Title of IRS employee to whom violation was reported", and line 9 which asks for the "Date violation reported".

Form 211 was revised in March 2014. It was not, and never has been, altered to discourage whistleblowers from approaching an operating division of the IRS. To the contrary, revised Form 211 expands the detail about a whistleblower's directly contacting investigating agencies before contacting the Whistleblower Office, including providing space for the whistleblower to report any information submitted to other Federal agencies as well as State authorities. See Form 211, Line 5, which instructs the whistleblower to provide the "[n]ame and title and contact information of IRS employee to whom violation was first reported, if known". See also line 6, which instructs the whistleblower to provide "[d]ate violation reported (in number 5), if applicable". And line 7 asks: "Did you submit this information to other Federal or State Agencies"? And Line 8, which states: "If yes in number 7, list the Agency Name and date submitted". If respondent's position were correct, these lines would be superfluous; in fact, they would be misleading to an unwary whistleblower.

Respondent also argues that the Whistleblower Office must first receive a whistleblower's information in order to permit Form 11369 to be filled out. Respondent maintains:

> The Form 11369 is the key document used by the Whistleblower Office in making the determinations required by section 7623 and only is created on a contemporaneous basis when information is referred by the Whistleblower Office. Thus, allowing individuals to file an award claim based on information previously submitted to a different function of the IRS would circumvent the centralized oversight and management of the program that was mandated by congress when section 7623(b) was enacted and undermine the Whistleblower Office's ability to make well-supported determinations.

In considering respondent's argument, we have reviewed Form 11369. The form allows an IRS operating division to inform the Whistleblower Office of each issue raised by the whistleblower, the disposition of that issue (i.e., whether the issue was pursued), and the level of assistance the whistleblower provided. Upon examination of the form, we do not believe it must be completed contemporaneously with a taxpayer-related examination. There is no reason for the contact information provided by Form 211 lines 5 and 6, other than for it to be used by the Whistleblower Office to contact the IRS employee who received the whistleblower information. And there is no reason for the Whistleblower Office to contact the IRS employee except when evaluating the whistleblower's claim.

Finally, even if respondent's contention that the Whistleblower Office is authorized by TRHCA sec. 406 to conduct examinations relating to taxpayers is correct, the statute does not mandate that a whistleblower first bring his/her information to the Whistleblower Office to be eligible for an award. TRHCA sec. 406(b)(B) provides only that the Whistleblower Office shall "analyze information received" and "either investigate the matter itself or assign it to the appropriate Internal Revenue Service office." The statute makes no mention of the Whistleblower Office's being the first IRS office to receive information, and, as a practical matter, nothing prevents the Whistleblower Office from pursuing the whistleblower's information even after another IRS office receives it.

III. Conclusion

On November 5, 2014, respondent filed a motion in limine, requesting the Court to confine its review to the issue of timing. Respondent asserts that the Court should apply an abuse of discretion standard of review and, if the Court finds the Whistleblower Office improperly denied petitioners' claims for award on the basis that the claims were untimely submitted, the cases should be remanded to the Whistleblower Office for further consideration. The parties did not fully explore the standard of review to be used in whistleblower cases. And because it

is not necessary for us to address the standard of review in resolving the timing issue, we will not do so. Respondent's motion in limine will be denied.

Because it rejected petitioners' claims as untimely, the Whistleblower Office did not conduct a review, investigation, or evaluation of the merits of petitioners' claims for award. We believe the parties should have an opportunity to resolve these cases on the basis of our holding herein. We will require them to file a status report in accordance with an order to be issued.

In the light of the foregoing,

An appropriate order will be issued.

INTERNAL REVENUE MANUAL
4.71.24.4.1(6)(C)

involved with this decision; however, your case write-up of the WB's information and its importance and value is critical for the award determination.

(7) Include this documentation, as appropriate and relevant in the WB case file:

- Original WB Form 211 and attachments
- Form 11369 for each taxpayer

  Note:

  Only one Form 11369 is required for a jointly filed Form 1040. Both spouses are combined on a single Form 11369.

- Copies of all examined returns, including substitute for returns (SFRs) you prepared and/or secured returns the taxpayer prepared
- Copy of the examination report and attachments
- Special agent's evaluation report (if applicable) attached to Form 3949
- Copies of Activity Records
- Copies of appropriate lead sheets and workpapers
- Any other information which may help the WB Office in determining an award amount

(8) Close the exam case file(s) according to normal procedures found in IRM 4.71.1, *Employee Plans Examination of Returns, Overview of Form 5500 Examination Procedures*.

(9) Contact the EP WB SME to coordinate mailing the Category A WB case file to the WB ICE Unit in Ogden.

Note:

The address for the ICE Unit is included in the case file when you receive it.

4.71.24.4 (12-06-2018)

Category B Whistleblower Claim Procedures

(1) When the WB Office receives Form 211, they add the claim to the WB tracking system.

(2) If the WB Office determines that the case meets the $2,000,000 criteria to be a Category B case, they prepare a Category B WB case file (Form 211

and supporting information) and assign the claim in e-Trak to TE/GE in OD Classification status.

(3) The WB Coordinator assigns claims involving retirement plans to the Classification group in CP&C. If the claim has audit potential, it will be transferred to the EP WB SME for taint review and debriefing, and assigned to an EP Exam group to be worked.

4.71.24.4.1 (12-06-2018)

Category B Whistleblower Claim Procedures for EP Agents

(1) The EP group will receive two files from the EP WB SME:

a. The examination case file

b. The Category B WB case file

(2) When you receive the Category B WB case file, carefully read the Category B Instructions in the WB case file. The Category B Instructions:

a. Provide basic procedures and guidance for the examination.

b. Explain the types of documents that must be in the WB case file. See IRM 4.71.24 Exhibit 6 at IRM 4.71 - Employee Plans Examination Exhibits for an example of the Category B Instructions.

(3) Follow these Category B WB case file special protection procedures:

a. Keep the WB file in a locked cabinet.

b. Include TD F 15-05.11 (SBU Cover Sheet) on the outside of the file.

c. Keep all WB material, documents, interview notes, etc. separate from the examination case file.

d. Don't mention the WB in the examination case file: Don't include any WB information in the case chronology record (CCR), exam workpapers, any audit file documents or RCCMS.

(4) Don't let the taxpayer know that there is a WB involved.

(5) If you think that an interview of the WB is warranted, contact the EP WB SME for assistance.

Note:

TE/GE Counsel will also need to be involved if the WB is interviewed; this will be coordinated by the EP WB SME.

(6) At the conclusion of the examination, complete Form 11369. See IRM 4.71.24 Exhibit 3 at IRM 4.71 - Employee Plans Examinations for an

example of Form 11369.

a. Complete Form 11369 for each taxpayer (with the exception of Forms 1040 that are jointly filed returns).

Note:

Only one Form 11369 is required for a jointly filed Form 1040 (both spouses are combined on a single Form 11369)

b. Clearly explain how the material provided by the WB affected the examination.

c. Get approval of Form 11369 from your group manager.

Note:

The WB Office heavily relies on this form when deciding the amount to award the WB. The WB Office is responsible to determine whether an award is warranted and the amount of the award. You won't be involved with this decision; however, your case write-up of the WB's information and its importance and value is critical for the award determination.

(7) At the conclusion of the examination, mail the Category B WB case file in a confidential envelope to the WB Coordinator at the address listed in *IRM 4.71.24.1.4 (2), Contact Information for Business Units and Sub-functions.*

(8) When mailed, the WB case file should contain the following documentation, as appropriate and relevant:

- Original WB Form 211 and attachments
- Form 11369 for each taxpayer

Note:

Only one Form 11369 is required for a jointly filed Form 1040 (both spouses are combined on a single Form 11369)

- Copies of all examined returns, including SFRs prepared during the examination and/or secured returns prepared by the taxpayer
- Copy of the examination report and attachments
- Special agent's evaluation report (if applicable) attached to Form 3949
- Copies of Activity Records
- Copies of appropriate lead sheets and workpapers

- Any other information which may assist the WB Office in determining an award amount.

(9) Close the examination case to EP Mandatory Review with Form 3198-A attached to the outside of the case file.

Note:

Other than the notation on Form 3198-A that the exam involves a Category B Whistleblower case, there should be no mention of the WB in the examination case file. Neither the CCR, exam workpapers nor any documents in the examination case file nor RCCMS should contain any information about the WB.

Note:

Do not issue the closing letter. Mandatory Review will issue the closing letter after their review is complete.

4.71.24.5 (12-06-2018)

Survey or Transfer

(1) If the decision is made to survey a Category A case at the group level:

a. The agent will complete items 1 through 8 and 14 of Form 11369 and contact the EP WB SME to coordinate mailing the form with the Category A WB case file to the WB ICE Unit in Ogden.

b. The exam case file will be closed using the Survey procedures contained in IRM 4.71.7.

(2) If the manager/agent decide to survey a Category B case:

a. The group manager must get the Area Manager's written approval and contact the WB Coordinator to discuss the reason the case is being surveyed.

Note:

If the case is a "sensitive case" , the WB Coordinator will secure the Sensitive Case Committee's written approval to not audit the case.

b. Once approved for survey, the agent will complete items 1 through 8 and 14 of Form 11369 and mail the form with the Category B WB case file to the WB Coordinator and close the exam case file using the Survey procedures in IRM 4.71.7.

(3) If the case is transferred to another group, the agent will complete items 1 through 8 and 15 of Form 11369 and mail the form to the WB Coordinator.

(4) The address of the WB Coordinator is the address listed in *IRM 4.71.24.1.4 (2), Contact Information for Business Units and Sub-functions*.

More Internal Revenue Manual

Page Last Reviewed or Updated: 07-Dec-2018

FORM 211

Form **211** (July 2018)	Department of the Treasury - Internal Revenue Service **Application for Award for Original Information**	OMB Number 1545-0409 Date Claim received Claim number *(completed by IRS)*

Section A – Information About the Person or Business You Are Reporting

1. Is this ☐ New submission or ☐ Supplemental submission
If a supplemental submission, list previously assigned claim number(s)

2. Last 4 digits of Taxpayer Identification Number(s) *(e.g., SSN, ITIN, or EIN)*

3. Name of taxpayer *(include aliases)* and any related taxpayers who committed the violation

4. Taxpayer's address, including ZIP code

5. Taxpayer's date of birth or approximate age

6. Name and title and contact information of IRS employee to whom violation was first reported, if known

7. Alleged Violation of Tax Law *(check all that apply)*

☐ Income Tax ☐ Employment Tax ☐ Estate & Gift Tax ☐ Tax Exempt Bonds
☐ Employee Plans ☐ Governmental Entities ☐ Exempt Organizations ☐ Excise
☐ Other (identify) _____

8. Describe the Alleged Violation. State all pertinent facts to the alleged violation. *(Attach a detailed explanation and include all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.)* Explain why you believe the act described constitutes a violation of the tax laws

9. Describe how you learned about and/or obtained the information that supports this claim. *(Attach sheet if needed)*

10. What is your relationship *(current and former)* to the alleged noncompliant taxpayer(s)? Check all that apply. *(Attach sheet if needed)*

☐ Current Employee ☐ Former Employee ☐ Attorney ☐ CPA
☐ Relative/Family Member ☐ Other *(describe)* _____

11. Do you still maintain a relationship with the taxpayer ☐ Yes ☐ No

12. If yes to number 11, describe your relationship with the taxpayer

13. Are you involved with any governmental or legal proceeding involving the taxpayer ☐ Yes ☐ No

14. If yes to number 13, Explain in detail. *(Attach sheet if needed)*

15. Describe the amount of tax owed by the taxpayer(s). Provide a summary of the information you have that supports your claim as to the amount owed *(i.e. books, ledgers, records, receipts, tax returns, etc). (Attach sheet if needed)*

16. Fill in Tax Year (TY) and Dollar Amount ($), if known

TY _____ $ _____ TY _____ $ _____ TY _____ $ _____ TY _____ $ _____ TY _____ $ _____

Section B – Information About Yourself

17. Name of individual claimant

18. Claimant's date of birth *(MMDDYYYY)*

19. Last 4 digits of Claimant's SSN or ITIN

20. Are you currently an IRS employee ☐ Yes ☐ No

21. Are you the spouse or a dependent of an IRS employee ☐ Yes ☐ No

22. Are you currently an IRS contractor ☐ Yes ☐ No

23. Are you a Federal, State or Local Government employee ☐ Yes ☐ No

24. Address of claimant, including ZIP code

25. Telephone number *(including area code)*

26. Email address

27. Declaration under Penalty of Perjury I declare that I have examined this application, all accompanying statement and supporting documentation, and, to the best of my knowledge and belief, they are true, correct, and complete

Signature of Claimant _____ Date _____

Instructions for Form 211, Application for Award for Original Information

General Information: The Whistleblower Office has responsibility for the administration of the whistleblower award program under section 7623 of the Internal Revenue Code. Section 7623 authorizes the payment of awards from the proceeds of amounts the Government collects as a result of the information provided by the whistleblower. A claimant must file a formal claim for award by completing and sending Form 211, Application for Award for Original Information, to be considered for the Whistleblower Program.

Send completed form along with any supporting information to: Internal Revenue Service
Whistleblower Office - ICE
1973 N. Rulon White Blvd.
M/S 4110
Ogden, UT 84404

Instructions for Completion of Form 211:

Question 1 If you have not previously submitted a Form 211 regarding the same or similar non-compliant activities, or the taxpayer(s) identified in this information have no known relationship to the taxpayer(s) identified in a previously submitted Form 211, check the box for "new submission."

If you are providing additional information regarding the same or similar non-compliant activities, and are identifying additional non-complaint activities by the same taxpayer(s), check the box for "supplemental submission." If you are identifying additional taxpayers involved in the same or similar tax non-compliance identified on a previously submitted Form 211, and those additional taxpayers are related to the taxpayer(s) identified on a previously submitted Form 211, check the box for "supplemental submission." If this is supplemental information, list previously assigned claim number(s).

Questions 2 – 5 Information about the Taxpayer – Provide the taxpayer's name, address, taxpayer identification number – last 4 digits (if known), and the taxpayer's date of birth or approximate age.

Question 6 If you reported the violation to an IRS employee; please provide the employee's name, title and the date the violation was reported. If known, provide contact information.

Questions 7 - 8 Indicate the type of tax that has not been paid or the tax liability that has not been reported and describe the alleged violation. Explain why you believe the act described constitutes a violation of the tax laws. Attach all supporting documentation (for example, books and records) to substantiate the claim. If documents or supporting evidence are not in your possession, describe these documents and their location.

Questions 9 - 14 These questions ask how and when you learned of the alleged violation and what relationship, if any, you have to the taxpayer.

Questions 15 – 16 These questions are asking for an estimate of the tax owed and the years/periods that the tax applies.

Questions 17 – 26 Information about the claimant – Provide the claimant's name, address, date of birth, SSN or ITIN (last 4 digits), email address, and telephone number.

Question 27 Information provided in connection with a claim under this provision of law must be made under an original signed Declaration under Penalty of Perjury. For joint or multiple claimants. Form 211 must be signed by each claimant.

Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this form to carry out the internal revenue laws of the United States. Our authority to ask for this information is 26 USC 6109 and 7623. We collect this information for use in determining the correct amount of any award payable to you under 26 USC 7623. We may disclose this information as authorized by 26 USC 6103, including to the subject taxpayer(s) as needed in a tax compliance investigation and to the Department of Justice for civil and criminal litigation. You are not required to apply for an award. However, if you apply for an award you must provide as much of the requested information as possible. Failure to provide information may delay or prevent processing your request for an award; providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 45 minutes. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can email us at *taxforms@irs.gov (please type "Forms Comment" on the subject line) or write to the Internal Revenue Service, Tax Forms Coordinating Committee, SE: W: CAR: MP: T: T: SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.

Send the completed Form 211 to the above Ogden address of the Whistleblower Office. Do NOT send the Form 211 to the Tax Forms Coordinating Committee.

WB-APP FORM

OMB APPROVAL	
OMB Number	3235-0686
Expires:	March 31, 2021
Estimated average burden hours per response.	2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM WB-APP

APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED PURSUANT TO SECTION 21F OF THE SECURITIES EXCHANGE ACT OF 1934

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)

1. Last Name	First	M.I.	Social Security No.
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP Code	Country
3. Telephone	Alt. Phone	E-mail Address	

B. ATTORNEY'S INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)

1. Attorney's Name

2. Firm Name

3. Street Address

City	State/ Province	ZIP Code	Country
4. Telephone	Fax	E-mail Address	

C. TIP/COMPLAINT DETAILS

1. Manner in which original information was submitted to SEC: SEC website ☐ Mail ☐ Fax ☐ Other ☐ _____

2a. Tip, Complaint or Referral number

2b. Date TCR referred to in 2a submitted to SEC / /

2c. Subject(s) of the Tip, Complaint or Referral:

D. NOTICE OF COVERED ACTION

1. Date of Notice of Covered Action to which claim relates: / /

2. Notice Number:

3a. Case Name

3b. Case Number

E. CLAIMS PERTAINING TO RELATED ACTIONS

1. Name of agency or organization to which you provided your information

2. Name and contact information for point of contact at agency or organization, if known.

3a. Date you provided your information / /

3b. Date action filed by agency/organization / /

4a. Case Name

4b. Case number

F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or were you at the time you acquired the original information you submitted to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission ("SEC" or "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; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board? YES ☐ NO ☐

2. Are you, or were you at the time you acquired the original information you submitted to us, 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 Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?
YES ☐ NO ☐

3. Did you obtain the information you are providing to us through the performance of an engagement required under the federal securities laws by an independent public accountant? YES ☐ NO ☐

4. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the SEC or another agency or organization? YES ☐ NO ☐

5. Are you a spouse, parent, child, or sibling of a member or employee of the Commission, or do you reside in the same household as a member or employee of the Commission? YES ☐ NO ☐

6. Did you acquire the information you are providing to us from any person described in questions F1 through F5? YES ☐ NO ☐

7. If you answered "yes" to any of questions 1 through 6 above, please provide details. Use additional sheets if necessary.

8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (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 the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?
YES ☐ NO ☐

8b. If you answered "No" to question 8a, please provide details. Use additional sheets if necessary.

9a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? YES ☐ NO ☐

9b. If you answered "Yes" to question 9a, please provide details. Use additional sheets if necessary.

G. ENTITLEMENT TO AWARD

Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us, or to another agency in a related action. Provide any additional information you think may be relevant in light of the criteria for determining the amount of an award set forth in Rule 21F-6 under the Securities Exchange Act of 1934. Include any supporting documents in your possession or control, and attach additional sheets, if necessary.

H. DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Signature Date

METHODS TO CONTACT THE SEC TO REPORT POTENTIAL VIOLATIONS

SCREENSHOTTED ON OCT 1, 2019

1.

FILING ANY COMPLAINTS THROUGH THE INVESTOR COMPLAINT FORM

U.S. Securities and Exchange Commission

Investor Complaint Form

OMB Number:	3235-0547
Expires:	October 31, 2020
Estimated average burden hours per response:	0.25

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.

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

- (•) 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.

Title

* First name

Middle initial

* Last name

* Street address

Address (cont.)

* City

* State/Province (required if US or Canada)

* Zip/Postal code

* Country UNITED STATES

Daytime phone

Alternate phone

Fax

* E-mail

* Are you a

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

Firm name

Type of firm

Broker, Advisor, or Salesperson

Street address

Address (cont.)

City

State/Province

Zip/Postal code

Country

Tell Us About Your Investment

Type 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.

Submit Form Clear Form

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

2.

SUBMITTING AN OMBUDSMAN MATTER MANAGEMENT SYSTEM 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 (https://www.sec.gov/investorad).

*** = Required Field**

► **IMPORTANT INFORMATION** (Click To Expand)

ABOUT YOU

Are you a Retail (Individual) Investor?*

◯ Yes ◯ 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?*

◯ Yes ◯ No

Prefix

--None--

First Name*

Last Name*

Address

City

Country

United States

State/Province

--None--

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?*

Select one...

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/) | 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

3.

SENDING A LETTER OR FAX TO THE COMMISSION

Where to Mail or Fax Your Correspondence:

U.S. Securities and Exchange Commission
Office of Investor Education and Advocacy
100 F Street, N.E.
Washington, DC 20549-0213

Fax: (202) 772-9295

4.

CONTACTING THE OFFICE OF THE INVESTOR ADVOCATE

Investor Advocate Contact Information

U.S. Securities & Exchange Commission
Office of the Investor Advocate
100 F Street, NE
Washington, DC 20549
(202) 551-3302
InvestorAdvocate@sec.gov

To reach the Ombudsman:

Ombudsman Matter Management System (OMMS)
Email: Ombudsman@sec.gov
Phone (toll-free): (877) 732-2001
Phone (local): (202) 551-3330
Fax: (301) 847-4722

Modified: July 23, 2018

5.

CONTACTING THE SEC AT ITS "CONTACTING US" LINE

Fast Answers

Contacting the SEC

SEC, Contacting Us

Here are some of the ways you can contact the SEC to get information:

- Complaint Form By using this form, we can resolve your complaints more quickly.
- Email For questions you may have about the securities laws, you can find what divisions and offices at the SEC receive emails from the public.
- Mail Here is a list of addresses to reach the SEC headquarters or the regional and district offices by postal mail.
- Phone Here is a list of phone numbers that investors use frequently to get information.

We have provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.

Modified: July 14, 2000

KOHN, KOHN, AND COLAPINTO'S PROPOSED MODIFICATION OF PROPOSED RULE 9(E)

APPENDIX A
TEXT OF THE CURRENT PRPOSED 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.

INDEX OF ORIGINAL SOURCES AVAILABLE ONLINE

Index of Original Source Material – Available Online
Comments to Proposed Rule 21F-9(e)
Submitted by: Kohn, Kohn & Colapinto, LLP
October 8, 2019

SEC Material

1. Dodd-Frank Act Whistleblower Reward Law, 15 U.S.C. § 78u-6
   https://www.kkc.com/assets/Site_18/files/SEC/sec78u-6.pdf

2. Final SEC Whistleblower Rule (2011), 76 *Federal Register* 34300
   https://www.kkc.com/assets/Site_18/files/SEC-final-rules-for-Dodd-Frank.pdf

3. Proposed SEC Whistleblower Rules (June 28, 2018)
   https://www.kkc.com/wp-content/uploads/2019/10/34-83557-4.pdf

4. Form TCR
   https://www.kkc.com/wp-content/uploads/2019/10/formtcr.pdf

5. Form WB-APP
   https://www.kkc.com/wp-content/uploads/2019/10/formwb-app.pdf

6. Senate Report 111-176
   https://www.kkc.com/assets/Site_18/files/resources/Rule%208/Senate%20Report%20No.%20111-176.pdf

7. SEC's Bounty Program Report No. 474 (March 29, 2010)
   https://www.kkc.com/assets/Site_18/files/SEC-Report-OlderRewardProgram-474.pdf

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1. 26 USC 7623(b)
   https://www.kkc.com/assets/Site_18/files/Statutes/26%20USC%20§%207623.pdf

2. IRS Internal Revenue Manual, Part 4, Ch. 71 § 24 – Whistleblower Claims
   https://www.irs.gov/irm/part4/irm_04-071-024

3. IRS 211
   https://www.kkc.com/wp-content/uploads/2019/10/f211.pdf

4. GAO Report GAO-16-20 (Oct. 2015)
   https://www.kkc.com/wp-content/uploads/2019/10/673440-2.pdf

5. *Whistleblower 21276-13W v. Commissioner of Internal Revenue,* 144 T.C. No. 15 (2015) https://www.kkc.com/assets/Site_18/files/resources/Whistleblower%2021276-13W%20v.%20Commissioner,%20144%20Tax%20Court%20No.%2015%20(June%202,%202015).pdf

False Claims Act Materials

1. 1943 False Claims Act
   https://www.kkc.com/assets/Site_18/files/winning/Amended-FCA-1943.compressed.pdf

2. 1986 False Claims Act
   https://www.kkc.com/assets/Site_18/files/winning/FCA-1986.compressed.pdf

KKC Rulemaking Comments:

May 6, 2019
https://www.kkc.com/wp-content/uploads/2019/09/s71618-5453107-184910-2.pdf

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Not uploaded yet