



March 3, 2022

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Supplement to Request No. 4-783 - Dodd-Frank Act Media Whistleblowers Petition

Dear Secretary Countryman:

On behalf of National Whistleblower Center, Whistleblower Network News, and Kohn, Kohn & Colapinto, we ask that you accept this supplement to our February 7, 2022 Petition, File No. 4-783 (hereinafter “Petition”). The Petition requests that the U.S. Securities and Exchange Commission (“SEC” or “Commission”) implement its policy on news media whistleblowers in a manner consistent with the First Amendment of the U.S. Constitution and the Commission’s own recognition that the news media provides “an essential means of bringing securities law violations to light.”¹ Our petition is supported by the statutory provision requiring “original information” that the Commission learns from news media accounts to be fully credited to a whistleblower, if the whistleblower was the media’s original source of the information.² This supplement further highlights the need to extend to media whistleblowers the same protections and recognitions granted to whistleblowers who report to the SEC through Self-Regulatory Organizations (“SROs”), to Congress, and by other means.

¹ See 17 C.F.R. § 202.10 (“Freedom of the press is of vital importance to the mission of the Securities and Exchange Commission. Effective journalism complements the Commission’s efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve. Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct.”).

² See 15 U.S.C. § 78u-6(a)(3). The statutory provision that requires the Commission to treat information obtained from news media accounts as “original information” submitted by a whistleblower, if the whistleblower was the source to the media, states as follows: “The term “original information” means information 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. § 78u-6(a)(3) (emphases added). Thus, even if the SEC’s knowledge about a potential violation was “exclusively” obtained from another government agency or the news media, the whistleblower who provided that information to the government or news media would still be credited as the “original source” for purposes of qualifying for a reward.

I. Defining “Media Whistleblower”.

We use the term “media whistleblower” throughout our Petition and this supplement. The title, though not a term of art, refers to a whistleblower who voluntarily provides “original information” about securities law violations to the news media that later forms the basis of an SEC enforcement action that would otherwise satisfy the requirements of the Dodd-Frank Act’s (“DFA”) whistleblower provisions.

Under the DFA, a whistleblower is “any individual who provides, [. . .] information relating to a violation of the securities laws to the Commission *in a manner established, by rule or regulation, by the Commission.*”³

The DFA explicitly states that the “news media” is a permissible source of information from which the Commission may receive tips—so long as the whistleblower is the original source of the information:

The term “original information” means information 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.*⁴

Congress therefore intended “media whistleblowers” who provide original information to be eligible for awards under the DFA as stated in Sections (a)(3)(B) and (C) above. Of concern in this Petition is that the carveouts created through SEC rulemaking for whistleblowers who have provided their original information to the “other sources” enumerated in subsection (C), such as disclosures “in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation” have not been extended to media whistleblowers. This oversight has created uncertainty and threatens the security of whistleblowers who communicate with the media, particularly those who unknowingly disclose securities violations, and as a result are denied awards.

This supplement outlines how the various carveouts granted to other protected sources of original information enable whistleblowers who go to these sources *instead of the SEC* to none-the-less be eligible for an award — and explains how failing to include media whistleblowers in these carveouts violates the DFA.

³ 15 U.S.C. § 78u-6(a)(6) (emphasis added).

⁴ 15 U.S.C. § 78u-6(a)(3)(emphasis added).

II. The DFA Provides a Statutory Right to Report SEC Violations to Other Sources.

The Dodd-Frank Act and SEC rules permit whistleblowers to initially submit “original information” to an “other source” and obtain full credit with the Commission, *as long as the whistleblower is the original source of the information*.⁵ The DFA enumerates a number of these circumstances, which include the news media.⁶ In numerous circumstances, the SEC can initiate an investigation based on information obtained from another source *before* a whistleblower files an official Form TCR, but the whistleblower still maintains entitlement to an award.⁷ In these cases, if the SEC learns the identity of the whistleblower, and contacts the whistleblower (even if by subpoena), before the whistleblower makes independent contact with the SEC, the whistleblower could still be fully eligible for a reward.⁸

Media whistleblowers are omitted from these carveouts which enable various other whistleblowers, from compliances officers to employees who report to SROs, to maintain their award eligibility despite first going to an “other source” to disclose their information – and – despite receiving an inquiry from the SEC before filing a Tips, Complaints, and Referrals Form (“Form TCR” or “TCR”).

Specifically, these carveouts are described below:

- If the Commission or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, even if your response is not compelled by subpoena or other applicable law. However, your submission of information to the Commission **will be considered voluntary if you voluntarily provided the same information to one of the other authorities** identified above prior to receiving a request, inquiry, or demand from the Commission.⁹
- The Commission will consider you to be an original source of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative. In order to be considered an original source of information that the Commission receives from Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, **you must have voluntarily given such authorities the information** within the meaning of these rules. You must establish your status as the original source of information to the Commission's satisfaction. In determining whether you are the original source of information, the Commission may seek assistance and confirmation from one of the other authorities described above, or from another entity (including your employer), in the event that you claim to be the original source of information that an authority or another entity provided to the Commission.¹⁰

⁵ 15 U.S.C. § 78u-6(a)(3)(A)(emphasis added).

⁶ 15 U.S.C. § 78u-6(a)(3)(C).

⁷ See 17 C.F.R. § 240.21F-4(a)(2); 240.21F-4(b)(5); and 240.21F-4(c).

⁸ See 15 U.S.C. § 78u-6(a)(3) (including within the definition of “original information” allegations “made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media . . . so long as the whistleblower is the source of the information”).

⁹ 17 C.F.R. § 240.21F-4(a)(2)(emphasis added).

¹⁰ 17 C.F.R. § 240.21F-4(b)(5)(emphasis added).

- You reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law **before or at the same time** you reported them to the Commission; **the entity later provided your information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information you reported to the entity**; and the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section. Under this paragraph (c)(3), you must also submit the same information to the Commission in accordance with the procedures set forth in §240.21F-9 within 120 days of providing it to the entity.¹¹

This supplement fully supports these carveouts. Permitting whistleblowers to obtain full credit as a Dodd-Frank whistleblower makes common sense, as it is well known that whistleblowers often initially report to well-established authorities other than the SEC but would still merit a reward if the Commission relied upon this information to issue a sanction. Similarly, it is well known that whistleblowers initially report to well-established media outlets and not the SEC when their allegations are of public concern and/or they are not aware that their disclosures include evidence of a securities violation that may lead to a successful SEC enforcement action.

The carveouts described here are explained in the 2011 Final Rule on the whistleblower program rules which states that “a whistleblower's submission of information to the Commission will be considered ‘voluntary’ **if the whistleblower voluntarily provided the same information to one of the other authorities identified in the rule prior to receiving a request, inquiry, or demand** from the Commission.” And that, “[t]his language is intended to respond to comments that, as proposed, our rule could have had **the unintended consequence of precluding a submission from being considered as ‘voluntary’ in circumstances where the whistleblower provided the information to another authority**, the other authority referred the matter to the Commission, **and our staff contacted the whistleblower** before he or she had the opportunity to file a whistleblower submission with us.”¹²

Under the Dodd-Frank Act, Congress identified government and media entities as permissible sources of information for the SEC to open investigations, while at the same time fully crediting the whistleblower who initially provided the information to these entities as having provided “original information” to the SEC.¹³ Providing “original information” to the SEC, either directly or via one of the statutory carveouts, is the core purpose of the Dodd-Frank Act.¹⁴

Consistent with the Commission’s intent to avoid the “the unintended consequence of precluding a submission from being considered as ‘voluntary’ in circumstances where the whistleblower provided the information to another authority” such as the news media, all carveouts in 21F-4, which would apply to whistleblowers who communicated their allegations as part of “a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation,” must also be applied to media whistleblowers. These statutorily protected “other sources” were not distinguished by Congress and broadly covered all reports to the government (even if this information was initially included in an official report) and disclosures to the news media; yet the

¹¹ 17 C.F.R. § 240.21F-4(c)(3) (emphasis added).

¹² 76 Fed. Reg. 34309, note 81 (emphasis added).

¹³ *See Id.*

¹⁴ *See* Senate Report 111-176, p. 110 (April 30, 2010) (“The Whistleblower Program . . . is intended to provide monetary rewards to those who contribute “original information”).

Commission has not issued any rationale for treating whistleblowers who go to the media differently from whistleblowers who go to any of the other statutorily recognized “other sources” when applying the voluntary standard. There is no basis for exclusion of media whistleblowers from these important protections.¹⁵

III. The Commission Expanded the Number of Entities to Which Whistleblowers Can Provide “Original Information” and Remain Covered Under the Act but Excluded the News Media from the Expanded Coverage.

In its 2010-11 rulemaking proceeding, the SEC significantly expanded the number of entities to which whistleblowers could make initial disclosures and still be fully covered under the Dodd-Frank Act.¹⁶ These entities included numerous state agencies, SROs, and reports to internal corporate compliance programs or company attorneys.¹⁷

The SEC recognized that it had to create special procedures to ensure that whistleblowers who made third-party disclosures would not be denied reward-eligibility due to the procedural rules that were also approved during the 2010-11 rulemaking proceeding. These waivers or modifications were needed for two simple reasons. First, whistleblowers who initially reported to other government entities (such as the Justice Department or an SRO) would not submit this information on a TCR form. Thus, the SEC could initiate an investigation prior to the submission of a TCR.

Second, once the SEC learned about a whistleblower’s disclosure to a third-party, the SEC may initiate contact with that whistleblower prior to the whistleblower initiating contact with the SEC. Based on the SEC’s newly crafted rule defining “voluntary,” a waiver of this rule was also needed.

The Final Rules waived the strict applicability of both the rules concerning filing TCRs and the definition of “voluntary.” These waivers applied to certain “other sources” established under SEC rules, and to the governmental entities identified in the Dodd-Frank statute. However, the only disclosures that were not covered under these waivers were disclosures to the news media.

Chart 1 below includes all the SRO entities with whom a whistleblower may make an initial disclosure without losing his or her “voluntary” status under either the Dodd-Frank Act statute or the SEC rules.¹⁸ It identifies which of these entities are covered under the rules waiving the strict “voluntary” requirements and the requirement to initially report violations through the submission of the Form TCR, and which are not.

¹⁵ 17 C.F.R. § 240.21F-4(a)(2).

¹⁶ See 17 C.F.R. § 240.21F-4(a)(2), (b)(5), (b)(7).

¹⁷ 17 C.F.R. § 240.21F-4(a)(1)-(2).

¹⁸ See 15 U.S.C. § 78u-6(a)(3); see also 17 C.F.R. § 240.21F-4(a)(2), (b)(5), (b)(7), (h).

CHART 1

**ENTITIES A WHISTLEBLOWER CAN REPORT
VIOLATIONS AND WHETHER OR NOT THE SEC WAIVED ITS STRICT
“VOLUNTARY” AND FORM TCR SUBMISSION RULES**

NO WAIVER	WAIVED
News Media	U.S. Congress
	U.S. Department of Justice
	U.S. Department of Treasury
	U.S. Environmental Protection Agency
	U.S. Department of Transportation
	U.S. Federal Trade Commission
	Any Other Authority of the Federal government
	Any State Attorney General
	Any State Securities Regulatory Authority
	Public Company Accounting Oversight Board
	Disclosures Made Internally to a Company Accused of Crimes
	Corporate Attorneys
	Corporate Compliance
	Corporate Audit Committees
	Corporate Supervisory Authority
	The Financial Industry Regulatory Authority (FINRA)
	BOX Exchange LLC
	Cboe BYX Exchange, Inc.
	Cboe BZX Exchange, Inc.
	Cboe C2 Exchange, Inc.
	Cboe EDGA Exchange, Inc.
	Cboe EDGX Exchange, Inc.
	Cboe Exchange, Inc.
	Investors Exchange LLC
	Long-Term Stock Exchange, Inc.
	MEMX, LLC
	Miami International Securities Exchange
	MIAX Emerald, LLC
	MIAX Pearl, LLC
	Nasdaq BX, Inc.
	Nasdaq GEMX, LLC
	Nasdaq ISE, LLC
	Nasdaq MRX, LLC
	Nasdaq PHLX, LLC
	The Nasdaq Stock Market
	New York Stock Exchange LLC
	NYSE Arca, Inc.
	NYSE Chicago, Inc.
	NYSE American LLC
	NYSE National, Inc.
	CBOE Futures Exchange, LLC
	Chicago Board of Trade
	The Depository Trust Company

National Securities Clearing Corporation
Fixed Income Clearing Corporation
The Options Clearing Corporation
ICE Clear Credit LLC
ICE Clear Europe Limited
LCH SA
Clearstream Banking, S.A.
DTCC ITP Matching US LLC
Bloomberg STP LLC
SS&C Technologies, Inc.
Euroclear Bank SA/NV
The Municipal Securities Rulemaking Board
All Other Self-Regulatory Organizations (SROs)

There has been no justification for the omission of the news media from the extensive list of authorized disclosure channels set forth in SEC Rule 21F-4(a), as shown in **Chart 1**. While self-regulatory organizations, for example, do play an important role in uncovering violations of federal securities laws, the very same can be said about the news media, and the SEC should therefore ensure that original information provided to the news media is equally covered. It is clear that, in enacting the Dodd-Frank Act, Congress intended to incentivize rather than penalize news media whistleblower disclosures—as evidenced by the explicit inclusion of news media disclosures within the definition of "original information" under 15 U.S.C. § 78u-6(a)(3). The Commission accordingly has an obligation to conform its whistleblower rules with this statutory command.

IV. The Commission’s First Decision in a Media-Disclosure Case Failed to Explain What a Media Whistleblower Must Do to Demonstrate that Information the SEC Learns from the Media Can Qualify as “Original Information” for Purposes of Qualifying for a Reward.

In a 2018 Commission decision, *Whistleblower Award Proceeding*, Case No. 2018-7, which concerned a media whistleblower’s award application, the Commission denied a claimant’s award application on the grounds that although the claimant alleged that his/her original information was disclosed in an online publication, the whistleblower never actually personally provided the Commission with that information. Thus, the issue of how this whistleblower should have provided the media-information to the Commission, requirements related to the filing of a TCR, and the issue of voluntariness were not directly addressed.¹⁹ However, the requirement that a news media whistleblower directly provides the SEC with his or her media information was established, but the *timing* and *procedure* for such post-publication disclosures were not discussed. Instead, the SEC simply established the requirement, but filled in no details.

¹⁹ *Whistleblower Award Proceeding*, Case No. 2018-7 (March 27, 2018) (emphases added), available at <https://www.sec.gov/rules/other/2018/34-82955.pdf>.

As the Commission stated in its denial order:

Even if Claimant was the original source of the Report [which was published on-line and could be considered a media-disclosure], Claimant still would need to demonstrate that Claimant provided the Report to the Commission.

[E]ven an individual who qualifies as the original source of information that the Commission receives indirectly must also provide that same information directly to the Commission in order to qualify for an award.²⁰

In this Petition we are simply asking the Commission to fill in these details in a manner (a) consistent with the plain meaning of the DFA; (b) consistent with the SEC’s policy on freedom of the press; (c) consistent with the legal requirement to harmonize its rules with the statutory requirements; (d) consistent with the recognition that its rule defining “voluntary” submissions has “unintended consequences” in all third-party cases; and (e) that a news media whistleblower would never initially file a form TCR with the Commission and may not learn of that requirement for a significant period of time, and would need a similar “lookback” exception regarding the “original source” rules. In its two whistleblower rulemaking proceedings, the SEC never articulated a rationale as to why certain third-party whistleblower disclosures are protected while news media whistleblower disclosures are not,²¹ nor could it lawfully articulate such an exclusion given Congress’ definition of “original information.”

V. Conclusion.

The basis for Petition File No. 4-783 is to ensure that the SEC implements procedures that properly effectuate the Dodd-Frank Act for news media whistleblowers.

The SEC was given the discretion to implement the form and manner in which whistleblowers provide original information to the SEC, but those rules were required to take into consideration the right of whistleblowers to initially report their concerns to the news media, and the fact that the SEC may learn of these allegations directly from the news media, not from the whistleblower.²² Because Congress created the right for whistleblowers to be given full credit for submitting “original information” even when the SEC learns of the information from the news media, and not from the whistleblower, the Commission had an obligation to harmonize this statutory right with

²⁰ *Id.*

²¹ When the SEC reviewed the issue of disclosures from other sources, they carefully considered the impact of the Commission’s proposed rules on “voluntary” and the requirement to file a TCR form. Accommodations were reached for all whistleblowers, except investigations triggered by media disclosures. *See, e.g., 76 Federal Register* at pp. 34309, fn. 81 and 34321-23 (June 13, 2011). No reason was ever provided for this omission and there was no discussion in any of the commentary in either the 2010-11 or 2018-2020 rulemaking proceedings related to this issue.

²² 15 U.S.C. § 78u-6(j)(“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.” (Emphasis added).

the rules subsequently approved concerning “voluntary” submissions and the form and procedure for making a submission.²³

Attached below to this letter are four hypothetical situations which demonstrate how the failure to carve out reasonable waivers for SEC investigations initiated by whistleblower disclosures is inconsistent with the Congressional intent behind the Dodd-Frank Act and undermines Commission Policy as reflected in 17 C.F.R. § 202.10.

These four hypotheticals below further explain why Congress explicitly recognized the right of whistleblowers to submit “original information” indirectly to the SEC, through media disclosures, and the compelling need to harmonize existing SEC regulations with the requirements of the Dodd-Frank Act and SEC policy.

As always, we are available at your (or your staff’s) convenience to discuss these issues, or other issues related to the whistleblower program. Furthermore, we hereby request an opportunity to present the attached PowerPoint presentation to the Commission members responsible for managing the whistleblower program or deciding whistleblower cases.

Thank you again for your time and consideration.

Respectfully submitted,

Siri Nelson
Executive Director
National Whistleblower Center

Mary Jane Wilmoth
Publisher and Editor
Whistleblower Network News

Stephen M. Kohn
Counsel to Media Whistleblowers
Kohn, Kohn and Colapinto, LLP

CC: Director, Office of the Whistleblower
Commissioners, SEC
Claims Review Staff, SEC
Office of General Counsel

²³ See *Citizens v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979) (“maximum possible effect should be afforded to all statutory provisions.”); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (writing that one must “interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into a[] harmonious whole.’”) (Internal citation omitted).

Hypotheticals

The follow scenarios are highly likely,
without the guidance requested in Petition 4-783

A. A Media Whistleblower Who Cooperates with an Ongoing Investigation:



DAY 1: WHISTLEBLOWER "A" REPORTS WRONGDOING TO THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" WHO VOLUNTARILY COOPERATES WITH THE SEC

DAY 3: WHISTLEBLOWER FILES FORM TCR WITH THE SEC, THINKING THEY WILL BE ELIGIBLE FOR AN AWARD DUE TO THEIR ONGOING COOPERATION

DAY 4: WHISTLEBLOWER "A" IS FIRED FROM THE FIRM DUE TO THEIR MEDIA REPORT AND SUFFERS IRREVERSIBLE DAMAGE TO THEIR PROFESSIONAL REPUTATION

DAY 5-999: WHISTLEBLOWER "A" CONTINUES TO COOPERATE WITH THE SEC, MEET WITH INVESTIGATORS, TESTIFY AT HEARINGS, PROVIDE DOCUMENTS, AND DOES SO VOLUNTARILY

DAY 1000: THE SEC COLLECTS PLACES SANCTIONS ON THE FRADULENT COMPANY BASED ON WHISTLEBLOWER "A"s INFORMATION, AND MILLIONS OF DOLLARS ARE RETURNED TO HARMED INVESTORS

OUTCOME: WHISTLEBLOWER "A"s IS UNABLE TO OBTAIN AN AWARD FROM THE SEC

B. Discrepancies in Treatment When A Whistleblower Reports To FINRA:



DAY 1: WHISTLEBLOWER "A"s ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT

OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY, WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC



LEADING UP TO INVESTIGATION: EMPLOYEE "B" HAS NO INTENTION OF BECOMING A WHISTLEBLOWER

DAY 1: EMPLOYEE "B" READS NEWS MEDIA REPORTS FROM WHISTLEBLOWER "A"

DAY 50: EMPLOYEE "B" SUBMITS AN AFFIDAVIT TO FINRA ON BEHALF OF A FRIEND WHO WAS A HARMED INVESTOR IN THE FRAUD UNCOVERED BY WHISTLEBLOWER "A"

DAY 51: FINRA DELIVERS THE AFFIDAVIT TO THE SEC

DAY 52: EMPLOYEE "B" REFUSES TO TALK TO THE SEC, IS LATER SUBPOENAED, AND TESTIFIES

DAY 119: EMPLOYEE "B" FILES A TCR FORM WITH THE SEC

OUTCOME: EMPLOYEE "B" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"s MEDIA DISCLOSURE

C. Discrepancies in Treatment when a Whistleblower Testifies to Corporate Counsel:



DAY 1: WHISTLEBLOWER "A"s ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT

**OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY,
WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC**

EMPLOYEE "B" IS AWARE OF THE FRAUD BUT HAS NO INTENTION TO REPORT

DAY 1: EMPLOYEE "B" READS THE REPORT BASED ON WHISTLEBLOWER "A"s DISCLOSURE TO THE MEDIA

DAY 2: EMPLOYEE "B", CONCERNED ABOUT THEIR OWN LIABILITY, MEETS PRIVATELY WITH CORPORATE COUNSEL AND REVEALS DETAILS ABOUT THE FRAUD THAT THEY WERE AWARE OF BEFORE THE REPORT

DAY 3-100: EMPLOYEE "B" DOES NOTHING WHILE CORPORATE COUNSEL INVESTIGATES THE FRAUD

DAY 101: CORPORATE COUNSEL SELF-REPORTS THE VIOLATION TO THE SEC, REVEALING EMPLOYEE "B"

DAY 102: EMPLOYEE "B" IS CONTACTED BY THE SEC, REFUSES TO COOPERATE, IS SUBPOENAED, AND TESTIFIES

DAY 119: EMPLOYEE "B" FILES A TCR FORM WITH THE SEC AND IS ELIGIBLE TO COLLECT AN AWARD

**OUTCOME: EMPLOYEE "B" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT
CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"s MEDIA DISCLOSURE**

D. Eligibility Extended to Culpable Directors:



DAY 1: WHISTLEBLOWER "A"s ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT, AND THEY VOLUNTARILY COOPERATE WITH THE SEC

**OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY,
WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC**



EMPLOYEE "B" IS A DIRECTOR OF THE COMPANY WITH OVERSIGHT OF THE DIVISION ACCUSED OF COMMITTING FRAUD BY WHISTLEBLOWER "A"

DAY 1: EMPLOYEE "B" READS NEWS MEDIA REPORT AND REPORTS WHISTLEBLOWER "A" TO GENERAL COUNSEL FOR VIOLATING COMPANY TRADE SECRETS

DAY 2: WHISTLEBLOWER "A" IS FIRED FROM THE FIRM

DAY 121: EMPLOYEE "B" FILES A FORM TCR WITH THE SEC PROVIDING ADDITIONAL INFORMATION REGARDING THE INVESTIGATION PROMPTED BY WHISTLEBLOWER "A"

**OUTCOME: EMPLOYEE "D" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT
CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"s MEDIA DISCLOSURE**

Support for Media Whistleblowers in Petition 4--783

NWC | NATIONAL
WHISTLEBLOWER
CENTER

WNW
WHISTLEBLOWER NETWORK NEWS

K&C
Kohn, Kohn & Colapinto ^{LLP}

March 3, 2022

Petition 4-783 Calls for Protections for Media Whistleblowers

NWC, WNN, and KKC, joined in submitting a petition urging the Commission to issue formal guidance related to media whistleblowers on February 7, 2022.

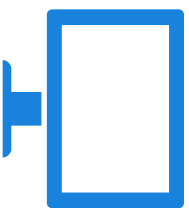
Main Issue:

Media whistleblowers, while included in the Dodd-Frank Act, are omitted from carveouts in Commission rules — prejudicing them in award determinations and violating the DFA.

The Policies:

- *17 C.F.R. § 202.10.*
- *15 U.S.C. § 78u-6(a).*
- *And, notes from the final rule.*

The SEC recognizes whistleblowers who provide original information through various sources to the following entities, including the news media.



NEWS MEDIA



**FEDERAL GOVERNMENT
DISCLOSURE**



**GOVERNMENT
INVESTIGATION**



**JUDICIAL/ADMINISTRATIVE
HEARING**

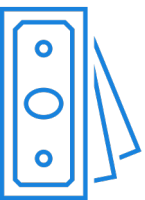


GOVERNMENT AUDIT

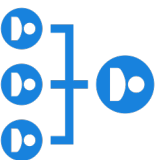
The SEC provides carveouts for several “other sources” of information when it comes to voluntary information. But not for media.



ANY STATE
ATTORNEY GENERAL



ANY STATE SECURITIES
REGULATORY AUTHORITY



THE CORPORATION ACCUSED OF
WRONGDOING
CORPORATE ATTORNEYS
CORPORATE COMPLIANCE
CORPORATE AUDIT
SUPERVISORY AUTHORITY



PUBLIC COMPANY
ACCOUNTING OVERSIGHT
BOARD



SELF-REGULATORY
ORGANIZATIONS



U.S. CONGRESS
U.S. DEPARTMENT OF JUSTICE
U.S. ENVIRONMENTAL PROTECTION AGENCY
U.S. DEPARTMENT OF TRANSPORTATION
U.S. FEDERAL TRADE COMMISSION
ANY OTHER FEDERAL
GOVERNMENT AUTHORITY



THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

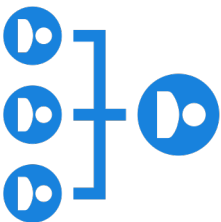
The SEC provides carveouts for several “other sources” of information when it comes to deadlines for filing. But not for media.



ANY STATE
ATTORNEY GENERAL



PUBLIC COMPANY
ACCOUNTING OVERSIGHT BOARD



THE CORPORATION ACCUSED OF WRONGDOING
CORPORATE ATTORNEYS
CORPORATE COMPLIANCE
CORPORATE AUDIT
SUPERVISORY AUTHORITY



SELF-REGULATORY
ORGANIZATIONS



U.S. CONGRESS
U.S. DEPARTMENT OF JUSTICE
U.S. ENVIRONMENTAL PROTECTION AGENCY
U.S. DEPARTMENT OF TRANSPORTATION
U.S. FEDERAL TRADE COMMISSION
ANY OTHER FEDERAL GOVERNMENT AUTHORITY



ANY STATE SECURITIES
REGULATORY AUTHORITY



THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

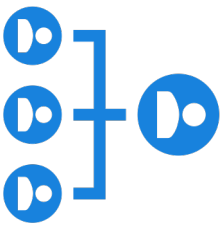
The SEC provides carveouts for several “other sources” of information when it comes to being the first to file. But not for media.



ANY STATE
ATTORNEY GENERAL



PUBLIC COMPANY
ACCOUNTING OVERSIGHT BOARD



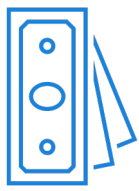
THE CORPORATION ACCUSED OF WRONGDOING
CORPORATE ATTORNEYS
CORPORATE COMPLIANCE
CORPORATE AUDIT
WHISTLEBLOWER'S CORPORATE SUPERVISOR



SELF-REGULATORY
ORGANIZATIONS



U.S. CONGRESS
U.S. DEPARTMENT OF JUSTICE
U.S. DEPARTMENT OF TREASURY
U.S. FEDERAL TRADE COMMISSION
ANY OTHER FEDERAL GOVERNMENT AUTHORITY



ANY STATE SECURITIES
REGULATORY AUTHORITY



THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY

Footnote 81 confirms that the omission of news media whistleblowers from award eligibility violates the intent of the Dodd-Frank Act .

“We have also added to paragraph (2) a statement that a whistleblower’s submission of information to the Commission will be considered “voluntary” if the whistleblower voluntarily provided the same information to one of the other authorities identified in the rule prior to receiving a request, inquiry, or demand from the Commission. This language is intended to respond to comments that, as proposed, our rule could have had the unintended consequence of precluding a submission from being considered as “voluntary” in circumstances where the whistleblower provided the information to another authority, the authority referred the matter to the Commission, and our staff contacted the whistleblower before he or she had the opportunity to file a whistleblower submission with us.”

**SEC POLICY STATEMENT ON
THE FREEDOM OF THE PRESS
17 C.F.R. § 202.10**

**“Freedom of the press is of
vital importance to the mission of
the Securities and Exchange Commission.”**

**“Effective journalism complements
the Commission’s efforts to ensure that investors
receive the full and fair disclosure that the law
requires, and that they deserve.”**

**“Diligent reporting is an essential
means of bringing securities law
violations to light and ultimately
helps to deter illegal conduct.”**

PETITION File No. 4-783 (Feb. 7, 2022):

Proposes Procedural Rules to harmonize the
SEC's Whistleblower Regulations with the Commission's policy on
Freedom of the Press and the requirements of the Dodd-Frank Act,
15 U.S.C. § 78u-6(a)(3)(B) and (C).

Scenarios

The following hypotheticals will present the various ways in which a whistleblower can become either:

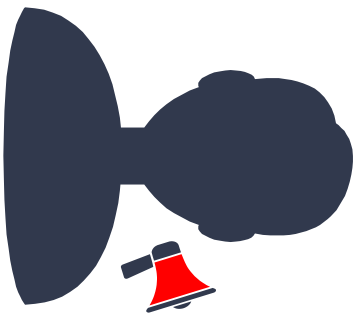
- *disqualified from an award* while their colleagues, who may never wish to blow the whistle, can
- *receive large monetary awards.*

i. Testifying to Corporate Counsel.

ii. Testifying to FINRA.

iii. Culpable Director eligibility.

iv. Ongoing cooperation with the assumption of an award.



WHISTLEBLOWER



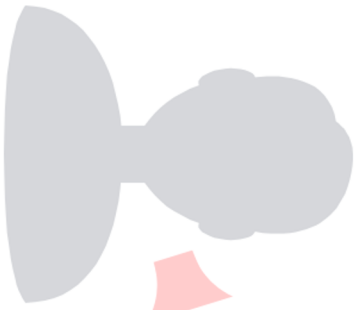
FINANCIAL INDUSTRY
REGULATORY AUTHORITY



U.S. SECURITIES AND
EXCHANGE COMMISSION



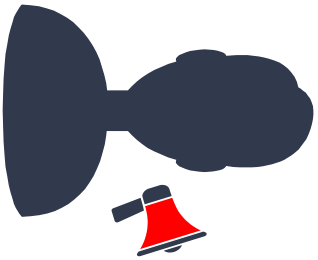
ELIGIBLE FOR WHISTLEBLOWER AWARD



WHISTLEBLOWER

FINANCIAL INSTITUTIONS
REGULATORY AUTHORITY

U.S. SECURITIES AND
EXCHANGE COMMISSION



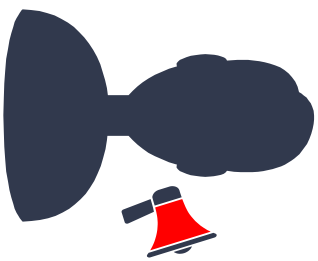
WHISTLEBLOWER



NEWS MEDIA



U.S. SECURITIES AND
EXCHANGE COMMISSION
SUBPEONA



WHISTLEBLOWER

DISQUALIFIED FROM AWARD



U.S. SECURITIES AND
EXCHANGE COMMISSION
SUBPEONA





EMPLOYEE "A"



NEWS MEDIA



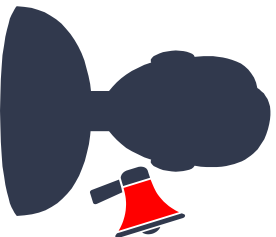
U.S. SECURITIES AND
EXCHANGE COMMISSION
SUBPEONA



WHISTLEBLOWER "A"



DENIED
AWARD



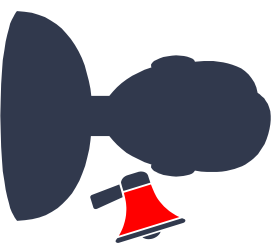
EMPLOYEE "B"



CORPORATE COUNSEL



U.S. SECURITIES AND
EXCHANGE COMMISSION
SUBPEONA



WHISTLEBLOWER "B"



CAN
RECEIVE
AWARD

i. Testifying to Corporate Counsel



DAY 1: WHISTLEBLOWER "A"'S ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT

OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY, WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC

EMPLOYEE "B" IS AWARE OF THE FRAUD BUT HAS NO INTENTION TO REPORT

DAY 1: EMPLOYEE "B" READS THE REPORT BASED ON WHISTLEBLOWER "A"'S DISCLOSURE TO THE MEDIA

DAY 2: EMPLOYEE "B", CONCERNED ABOUT THEIR OWN LIABILITY, MEETS PRIVATELY WITH CORPORATE COUNSEL AND REVEALS DETAILS ABOUT THE FRAUD THAT THEY WERE AWARE OF BEFORE THE REPORT

DAY 3-100: EMPLOYEE "B" DOES NOTHING WHILE CORPORATE COUNSEL INVESTIGATES THE FRAUD

DAY 101: CORPORATE COUNSEL SELF-REPORTS THE VIOLATION TO THE SEC, REVEALING EMPLOYEE "B"

DAY 102: EMPLOYEE "B" IS CONTACTED BY THE SEC, REFUSES TO COOPERATE, IS SUBPOENAED, AND TESTIFIES

DAY 119: EMPLOYEE "B" FILES A TCR FORM WITH THE SEC AND IS ELIGIBLE TO COLLECT AN AWARD

OUTCOME: EMPLOYEE "B" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"'S MEDIA DISCLOSURE

ii. Testifying to FINRA



DAY 1: WHISTLEBLOWER "A"'S ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT

**OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY,
WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC**

LEADING UP TO INVESTIGATION: EMPLOYEE "B" HAS NO INTENTION OF BECOMING A WHISTLEBLOWER

DAY 1: EMPLOYEE "B" READS NEWS MEDIA REPORTS FROM WHISTLEBLOWER "A"

DAY 50: EMPLOYEE "B" SUBMITS AN AFFIDAVIT TO FINRA ON BEHALF OF A FRIEND WHO WAS A HARMED INVESTOR IN THE FRAUD UNCOVERED BY WHISTLEBLOWER "A"

DAY 51: FINRA DELIVERS THE AFFIDAVIT TO THE SEC

DAY 52: EMPLOYEE "B" REFUSES TO TALK TO THE SEC, IS LATER SUBPOENAED, AND TESTIFIES

DAY 119: EMPLOYEE "B" FILES A TCR FORM WITH THE SEC

OUTCOME: EMPLOYEE "B" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"'S MEDIA DISCLOSURE



iii. Culpable director eligibility



DAY 1: WHISTLEBLOWER "A"'S ALLEGATIONS OF WRONGDOING ARE REPORTED IN THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER "A" BASED ON IDENTIFICATION IN NEWS REPORT, AND THEY VOLUNTARILY COOPERATE WITH THE SEC

OUTCOME: DISCLOSURE IS CONSIDERED NON-VOLUNTARY, WHISTLEBLOWER "A" IS UNABLE TO OBTAIN AN AWARD FROM THE SEC



EMPLOYEE "B" IS A DIRECTOR OF THE COMPANY WITH OVERSIGHT OF THE DIVISION ACCUSED OF COMMITTING FRAUD BY WHISTLEBLOWER "A"

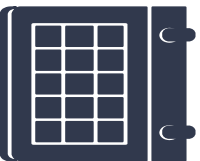
DAY 1: EMPLOYEE "B" READS NEWS MEDIA REPORT AND REPORTS WHISTLEBLOWER "A" TO GENERAL COUNSEL FOR VIOLATING COMPANY TRADE SECRETS

DAY 2: WHISTLEBLOWER "A" IS FIRED FROM THE FIRM

DAY 121: EMPLOYEE "B" FILES A FORM TCR WITH THE SEC PROVIDING ADDITIONAL INFORMATION REGARDING THE INVESTIGATION PROMPTED BY WHISTLEBLOWER "A"

OUTCOME: EMPLOYEE "D" IS ELIGIBLE FOR AN AWARD FOR PROVIDING INFORMATION THAT CONTRIBUTED TO THE CASE OPENED BY WHISTLEBLOWER "A"'S MEDIA DISCLOSURE

iv. Ongoing cooperation with the assumption of an award



DAY 1: WHISTLEBLOWER “A” REPORTS WRONGDOING TO THE NEWS MEDIA

DAY 2: SEC CONTACTS WHISTLEBLOWER “A” WHO VOLUNTARILY COOPERATES WITH THE SEC

DAY 3: WHISTLEBLOWER FILES FORM TCR WITH THE SEC, THINKING THEY WILL BE ELIGIBLE FOR AN AWARD DUE TO THEIR ONGOING COOPERATION

DAY 4: WHISTLEBLOWER “A” IS FIRED FROM THE FIRM DUE TO THEIR MEDIA REPORT AND SUFFERS IRREVERSIBLE DAMAGE TO THEIR PROFESSIONAL REPUTATION

DAY 5-999: WHISTLEBLOWER “A” CONTINUES TO COOPERATE WITH THE SEC, MEET WITH INVESTIGATORS, TESTIFY AT HEARINGS, PROVIDE DOCUMENTS, AND DOES SO VOLUNTARILY

DAY 1000: THE SEC COLLECTS PLACES SANCTIONS ON THE FRAUDULENT COMPANY BASED ON WHISTLEBLOWER “A”’S INFORMATION, AND MILLIONS OF DOLLARS ARE RETURNED TO HARMED INVESTORS

OUTCOME: WHISTLEBLOWER “A”’S IS UNABLE TO OBTAIN AN AWARD FROM THE SEC

IN EACH SCENARIO, WHISTLEBLOWER "A" **RECEIVED NO**
AWARD FROM THEIR INITIAL DISCLOSURE TO THE
MEDIA, WHILE OTHER EMPLOYEES AT THE FRAUD-
RIDDEN FIRMS **WERE ABLE TO COLLECT** DESPITE THEIR
LACK OF INTENTION TO EVER REPORT THE
WRONGDOING

WHISTLEBLOWER “A” HAS NOW:

SUFFERED IRREVERSIBLE DAMAGE TO THEIR REPUTATION, BECOME UNEMPLOYED, BLACKLISTED, AND MAY NEVER PROFESSIONALLY RECOVER.

OTHER EMPLOYEES, WHO NEVER INTENDED TO REPORT THE FRAUD, AND HAD TO BE SUBPEONEAD FOR INFORMATION:

RECEIVED LARGE FINANCIAL REWARDS.

WHISTLEBLOWER “A” HAS NOW **SUFFERED IRREVERSIBLE
DAMAGE TO THEIR REPUTATION, BECOME UNEMPLOYED,
BLACKLISTED, AND MAY NEVER PROFESSIONALLY
RECOVER.**

OTHER EMPLOYEES, *WHO NEVER INTENDED TO
REPORT THE FRAUD, AND HAD TO BE SUBPEONEAD
FOR INFORMATION,*
RECEIVED LARGE FINANCIAL REWARDS.

Petition 4-783 addresses this problem.

For further inquiry, please contact :

National Whistleblower Center
info@whistleblowers.org



Whistleblower Network News
contact@whistleblowernews.com



Kohn, Kohn, & Colapinto LLC
contact@kkc.com



Assisted by: Grace Schepis, Law Clerk