



SEC's Proposed Whistleblower Rules Will Eviscerate Compliance Programs

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Last month, I wrote about California's whistleblower hotline in this [post](#). In early November, the Securities and Exchange Commission issued proposed [rules](#) for implementing the whistleblower provisions of Section 21F of the Securities Exchange Act of 1934, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 21F requires, subject to various conditions, that the SEC pay a bounty to whistleblowers who voluntarily provide the SEC with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action. The act's legislative history states that the SEC has "discretion in determining the amount and whether or not a whistleblower is eligible to be awarded." S. Rep. No. 111-176, at 112 (2010) (Conf. Rep.)

The comment period for the SEC's proposed rules ended last week. As I stated in my [comment letter](#), the rules should exclude anyone who fails to comply with an issuer's whistleblower complaint procedures. Failure to exclude people who bypass internal complaint procedures will necessarily undermine compliance. Rather than reporting allegations to issuers so that issuers can investigate and remediate problems, whistleblowers will have a significant incentive to play the SEC's "bounty lottery". The key to any efficient regulatory scheme is to encourage voluntary compliance. Without an exclusion for opportunists who bypass compliance programs, the bounty program will significantly undermine those programs.

[In the interest of full disclosure, my comment letter is dated November 8 when I started writing it, but was not sent to the SEC until last week.]

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