

§ 240.21F-9

§ 240.21F-9 Procedures for submitting original information.

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

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

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

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

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

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

(1) Has verified your identity;

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

(3) Has obtained your non-waivable consent to provide the Commission

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

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

(d) If you submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act) but before the effective date of these rules, your submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section. If you were an anonymous whistleblower, however, you must provide your attorney with a completed and signed copy of Form TCR within 60 days of the effective date of these rules, your attorney must retain the signed form in his or her records, and you must provide of copy of the signed form to the Commission staff upon request by Commission staff prior to any payment of an award to you in connection with your submission. Notwithstanding the foregoing, you must follow the procedures and conditions for making a claim for a whistleblower award described in §§ 240.21F-10 and 240.21F-11 of this chapter.

(e) You must follow the procedures specified in paragraphs (a) and (b) of this section within 30 days of when you first provide the Commission with original information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission shall waive your noncompliance with paragraphs (a) and (b) of this section if:

(1) You demonstrate to the satisfaction of the Commission that you complied with the requirements of paragraphs (a) and (b) of this section within

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30 days of first obtaining actual or constructive notice about those requirements (or 30 days from the date you retain counsel to represent you in connection with your submission of original information, whichever occurs first); and

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

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

§ 240.21F-10 Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of \$1,000,000.

(a) Whenever a Commission action results in monetary sanctions totaling more than \$1,000,000, the Office of the Whistleblower will cause to be published on the Commission's Web site a "Notice of Covered Action." Such Notice will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Commission action, exceeds \$1,000,000; or, in the absence of such judgment or order subsequent to the deposit of monetary sanctions exceeding \$1,000,000 into a disgorgement or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002. A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(b) To file a claim for a whistleblower award, you must file Form WB-APP (as specified in § 240.21F-8(d)(2)). You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail, email (as a PDF attachment), or fax (or any other manner that the Office permits).

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

(2) Notwithstanding paragraphs (a) and (b)(1) of this section, the time period to file an application for an award based on a Commission settlement agreement covered by § 240.21F-4(d) of

this chapter shall be governed exclusively by § 240.21F-11(b)(1) of this chapter if the settlement agreement was entered into after July 21, 2010 but before the effective date of this section as amended in 2020.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB-APP, and your identity must be verified in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission's judicial or administrative action has expired, or where an appeal has been filed, after all appeals in the action have been concluded, one or more staff members designated by the Director of the Division of Enforcement ("Claims Review Staff") will evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-8(b) of this chapter. Following a determination by the Claims Review Staff (and an opportunity for the Commission to review that determination), the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award dollar and percentage amount, and the grounds therefore.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response. In applying the award factors and standards specified in § 240.21F-6, and determining the award dollar and percentage amounts