II

116TH CONGRESS
1ST SESSION

S. 2529

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to modify provisions relating to whistleblower incentives and protection, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2019

Mr. GRASSLEY (for himself, Ms. BALDWIN, Ms. ERNST, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to modify provisions relating to whistleblower incentives and protection, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Whistleblower Programs Improvement Act''.

SEC. 2. WHISTLEBLOWER PROTECTIONS FOR INTERNAL DISCLOSURES.

(a) COMMODITIES.—Section 23 of the Commodity Exchange Act (7 U.S.C. 26) is amended—

(1) in subsection (a)(7)—

(A) by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—The term''; and

(B) by adding at the end the following:

''(B) SPECIAL RULE.—Solely for the purposes of subsection (h)(1), the term 'whistleblower' includes any individual who takes, or 2 or more individuals acting jointly who take, an action described in subsection (h)(1)(A).''; and

(2) in subsection (h)(1)(A)—

(A) in clause (i), by striking ''or'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(iii) in providing information regarding any conduct that the whistleblower reasonably believes constitutes a violation of any law, rule, or regulation subject to the jurisdiction of the Commission to—

"(I) a person with supervisory authority over the whistleblower at the employer of the whistleblower, if that employer is an entity registered with, or required to be registered with, the Commission, a self-regulatory organization, or a State securities commission or office performing like functions; or

"(II) another individual working for the employer described in subclause (I) who the whistleblower reasonably believes has the authority—

"(aa) to investigate, discover, or terminate the misconduct; or

"(bb) to take any other action to address the misconduct.".

(b) SECURITIES.—Section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6) is amended—

(1) in subsection (a)(6)—

(A) by striking "The term" and inserting the following:

"(A) IN GENERAL.—The term"; and

(B) by adding at the end the following:

"(B) SPECIAL RULE.—Solely for the purposes of subsection (h)(1), the term 'whistleblower' includes any individual who takes, or 2 or more individuals acting jointly who take, an action described in subsection (h)(1)(A)."; and

(2) in subsection (h)(1)(A)—

(A) in clause (ii), by striking "or" at the end;

(B) in clause (iii), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(iv) in providing information regarding any conduct that the whistleblower reasonably believes constitutes a violation of any law, rule, or regulation subject to the jurisdiction of the Commission to—

"(I) a person with supervisory authority over the whistleblower at the employer of the whistleblower, if that employer is an entity registered with, or required to be registered with, the Commission, a self-regulatory organization, or a State securities commission or office performing like functions; or

"(II) another individual working for the employer described in subclause (I) who the whistleblower reasonably believes has the authority to—

"(aa) investigate, discover, or terminate the misconduct; or

"(bb) take any other action to address the misconduct.".

SEC. 3. PROMPT PAYMENT OF AWARDS.

(a) COMMODITIES.—

(1) IN GENERAL.—Section 23(b) of the Commodity Exchange Act (7 U.S.C. 26) is amended by adding at the end the following:

"(3) TIMELY PROCESSING OF CLAIMS.—

"(A) INITIAL DISPOSITION.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), and subject to clause (ii), the Commission shall make an initial disposition with respect to a claim submitted by a whistleblower for an award under this section (referred to in this paragraph as an 'award claim') not later than 1 year after the deadline established by the

Commission, by rule, for the whistleblower to file the award claim.

"(ii) MULTIPLE ACTIONS.—If a covered judicial or administrative action involves 1 or more related actions, the requirement under clause (i) shall apply with respect to the latest deadline with respect to the actions.

"(B) EXCEPTIONS.—

"(i) INITIAL EXTENSION.—If the Director of the Division of Enforcement of the Commission (referred to in this paragraph as the 'Director'), or the designee of the Director, determines that an award claim is sufficiently complex or involves more than 1 whistleblower, or if other good cause exists such that the Commission cannot reasonably satisfy the requirement under subparagraph (A), the Director or the designee, as applicable, after providing notice to the Chairman of the Commission (referred to in this paragraph as the 'Chairman'), may extend the deadline with respect to the satisfaction of that subparagraph by not more than 180 days.

"(ii) ADDITIONAL EXTENSIONS.—If, after providing an extension under clause (i), the Director, or the designee of the Director, determines that the Commission cannot reasonably satisfy the requirement under subparagraph (A) with respect to an award claim, as extended under that clause, the Director or the designee, as applicable, after providing notice to the Chairman, may extend the period in which the Commission may satisfy subparagraph (A) by 1 additional 180-day period.

"(iii) NOTICE TO WHISTLEBLOWER REQUIRED.—If the Director, or the designee of the Director, exercises authority under clause (i) or (ii), the Director or the designee, as applicable, shall submit to the whistleblower who filed the award claim that is subject to that action by the Director or the designee a written notification of that action by the Director or the designee.

"(C) APPLICABILITY.—This paragraph shall apply only to an award claim that is timely submitted under a deadline established by the Commission after the date of enactment of this paragraph.''.

(2) RULES.—The Commodity Futures Trading Commission may issue any rules that are necessary to carry out paragraph (3) of section 23(b) of the Commodity Exchange Act (7 U.S.C. 26(b)) (as added by paragraph (1)).

(b) SECURITIES.—

(1) IN GENERAL.—Section 21F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6(b)) is amended by adding at the end the following:

''(3) TIMELY PROCESSING OF CLAIMS.—

''(A) INITIAL DISPOSITION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), and subject to clause (ii), the Commission shall make an initial disposition with respect to a claim submitted by a whistleblower for an award under this section (referred to in this paragraph as an 'award claim') not later than 1 year after the deadline established by the Commission, by rule, for the whistleblower to file the award claim.

''(ii) MULTIPLE ACTIONS.—If a covered judicial or administrative action involves 1 or more related actions, the requirement under clause (i) shall apply with respect to the latest deadline with respect to the actions.

"(B) EXCEPTIONS.—

"(i) INITIAL EXTENSION.—If the Director of the Division of Enforcement of the Commission (referred to in this paragraph as the 'Director'), or the designee of the Director, determines that an award claim is sufficiently complex or involves more than 1 whistleblower, or if other good cause exists such that the Commission cannot reasonably satisfy the requirement under subparagraph (A), the Director or the designee, as applicable, after providing notice to the Chairman of the Commission (referred to in this paragraph as the 'Chairman'), may extend the deadline with respect to the satisfaction of that subparagraph by not more than 180 days.

"(ii) ADDITIONAL EXTENSIONS.—If, after providing an extension under clause (i), the Director, or the designee of the Director, determines that the Commission cannot reasonably satisfy the requirement under subparagraph (A) with respect to an award claim, as extended under that clause, the Director or the designee, as applicable, after providing notice to the Chairman, may extend the period in which the Commission may satisfy subparagraph (A) by 1 additional 180-day period.

"(iii) NOTICE TO WHISTLEBLOWER REQUIRED.—If the Director, or the designee of the Director, exercises authority under clause (i) or (ii), the Director or the designee, as applicable, shall submit to the whistleblower who filed the award claim that is subject to that action by the Director or the designee a written notification of that action by the Director or the designee.

"(C) APPLICABILITY.—This paragraph shall apply only to an award claim that is timely submitted under a deadline established by the Commission after the date of enactment of this paragraph.".

(2) RULES.—The Securities and Exchange Commission may issue any rules that are necessary to carry out paragraph (3) of section 21F(b) of the

Securities Exchange Act of 1934 (15 U.S.C. 78u–6(b)), as added by paragraph (1).

SEC. 4. MISCELLANEOUS PROVISIONS.

(a) CFTC WHISTLEBLOWER PROGRAM EDUCATION INITIATIVES.—Section 23(g)(2) of the Commodity Exchange Act (7 U.S.C. 26(g)(2)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(C) the funding of initiatives designed to educate stakeholders regarding the incentives and protections available under this section, including the benefits of those incentives and protections.".

(b) DEPOSITS INTO CFTC CONSUMER PROTECTION FUND.—Section 23(g)(3)(A) of the Commodity Exchange Act (7 U.S.C. 26(g)(3)(A)) is amended by striking "$100,000,000" and inserting "$150,000,000".

(c) AVAILABILITY OF CERTAIN CFTC INFORMATION TO GOVERNMENT AGENCIES.—Section 23(h)(2)(C) of the Commodity Exchange Act (7 U.S.C. 26(h)(2)(C)) is amended—

(1) in clause (i)—

(A) in subclause (II), by striking "jurisdiction;" and inserting the following: "jurisdiction, including—

"(aa) the Federal Trade Commission;

"(bb) the Internal Revenue Service; and

"(cc) the Department of State;"; and

(B) in subclause (VI), by inserting "or other foreign law enforcement authority" before the period at the end; and

(2) in clause (ii)—

(A) by striking "Each" and inserting the following:

"(I) IN GENERAL.—Each";

(B) in subclause (I) (as so designated), by inserting "subclauses (I) through (V) of" before "clause (i)"; and

(C) by adding at the end the following:

"(II) FOREIGN AUTHORITIES.—An entity described in subclause (VI) of clause (i) shall maintain information described in that clause in accordance with such assurances of confidentiality as the Commission determines appropriate.''.

(d) TECHNICAL CORRECTIONS.—

(1) REVIEW.—Section 23(f)(3) of the Commodity Exchange Act (7 U.S.C. 26(f)(3)) is amended by striking ''section 7064'' and inserting ''section 706''.

(2) EXISTING COMMODITIES PROVISION.—

(A) IN GENERAL.—Section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6) is amended by adding at the end the following:

''(k) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION.—

''(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

''(2) PREDISPUTE ARBITRATION AGREEMENT.—No predispute arbitration agreement shall be valid or enforceable if the agreement requires the arbitration of a dispute arising under this section.''.

(B) APPLICABILITY.—Subsection (k) of section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6), as added by subparagraph (A), shall apply with respect to any action that is filed on or after, or that is pending as of, the date of enactment of this Act.

(e) CLARIFICATIONS REGARDING PERFORMANCE EVALUATIONS FOR THE FOREIGN SERVICE.—Section 2302(a)(2)(viii) of title 5, United States Code, is amended by striking ‘‘or under title 38’’ and inserting ‘‘, under title 38, or under the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.)’’.

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