

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Whistleblower Pro-
5 grams Improvement Act”.

1 **SEC. 2. WHISTLEBLOWER PROTECTIONS FOR INTERNAL**
2 **DISCLOSURES.**

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

5 (1) in subsection (a)(7)—

6 (A) by striking “The term” and inserting
7 the following:

8 “(A) IN GENERAL.—The term”; and

9 (B) by adding at the end the following:

10 “(B) SPECIAL RULE.—Solely for the pur-
11 poses of subsection (h)(1), the term ‘whistle-
12 blower’ includes any individual who takes, or 2
13 or more individuals acting jointly who take, an
14 action described in subsection (h)(1)(A).”; and
15 (2) in subsection (h)(1)(A)—

16 (A) in clause (i), by striking “or” at the
17 end;

18 (B) in clause (ii), by striking the period at
19 the end and inserting “; or”; and

20 (C) by adding at the end the following:

21 “(iii) in providing information regard-
22 ing any conduct that the whistleblower rea-
23 sonably believes constitutes a violation of
24 any law, rule, or regulation subject to the
25 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

1 “(II) another individual working
 2 for the employer described in sub-
 3 clause (I) who the whistleblower rea-
 4 sonably believes has the authority
 5 to—

6 “(aa) investigate, discover,
 7 or terminate the misconduct; or

8 “(bb) take any other action
 9 to address the misconduct.”.

10 **SEC. 3. PROMPT PAYMENT OF AWARDS.**

11 (a) COMMODITIES.—

12 (1) IN GENERAL.—Section 23(b) of the Com-
 13 modity Exchange Act (7 U.S.C. 26) is amended by
 14 adding at the end the following:

15 “(3) TIMELY PROCESSING OF CLAIMS.—

16 “(A) INITIAL DISPOSITION.—

17 “(i) IN GENERAL.—Except as pro-
 18 vided in subparagraph (B), and subject to
 19 clause (ii), the Commission shall make an
 20 initial disposition with respect to a claim
 21 submitted by a whistleblower for an award
 22 under this section (referred to in this para-
 23 graph as an ‘award claim’) not later than
 24 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

1 the Commission after the date of enactment of
2 this paragraph.”.

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

8 (b) SECURITIES.—

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

12 “(3) TIMELY PROCESSING OF CLAIMS.—

13 “(A) INITIAL DISPOSITION.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in subparagraph (B), and subject to
16 clause (ii), the Commission shall make an
17 initial disposition with respect to a claim
18 submitted by a whistleblower for an award
19 under this section (referred to in this para-
20 graph as an ‘award claim’) not later than
21 1 year after the deadline established by the
22 Commission, by rule, for the whistleblower
23 to file the award claim.

24 “(ii) MULTIPLE ACTIONS.—If a cov-
25 ered judicial or administrative action in-

1 involves 1 or more related actions, the re-
2 quirement under clause (i) shall apply with
3 respect to the latest deadline with respect
4 to the actions.

5 “(B) EXCEPTIONS.—

6 “(i) INITIAL EXTENSION.—If the Di-
7 rector of the Division of Enforcement of
8 the Commission (referred to in this para-
9 graph as the ‘Director’), or the designee of
10 the Director, determines that an award
11 claim is sufficiently complex or involves
12 more than 1 whistleblower, or if other good
13 cause exists such that the Commission can-
14 not reasonably satisfy the requirement
15 under subparagraph (A), the Director or
16 the designee, as applicable, after providing
17 notice to the Chairman of the Commission
18 (referred to in this paragraph as the
19 ‘Chairman’), may extend the deadline with
20 respect to the satisfaction of that subpara-
21 graph by not more than 180 days.

22 “(ii) ADDITIONAL EXTENSIONS.—If,
23 after providing an extension under clause
24 (i), the Director, or the designee of the Di-
25 rector, determines that the Commission

1 cannot reasonably satisfy the requirement
2 under subparagraph (A) with respect to an
3 award claim, as extended under that
4 clause, the Director or the designee, as ap-
5 plicable, after providing notice to the
6 Chairman, may extend the period in which
7 the Commission may satisfy subparagraph
8 (A) by 1 additional 180-day period.

9 “(iii) NOTICE TO WHISTLEBLOWER
10 REQUIRED.—If the Director, or the des-
11 ignee of the Director, exercises authority
12 under clause (i) or (ii), the Director or the
13 designee, as applicable, shall submit to the
14 whistleblower who filed the award claim
15 that is subject to that action by the Direc-
16 tor or the designee a written notification of
17 that action by the Director or the designee.

18 “(C) APPLICABILITY.—This paragraph
19 shall apply only to an award claim that is time-
20 ly submitted under a deadline established by
21 the Commission after the date of enactment of
22 this paragraph.”.

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

1 Securities Exchange Act of 1934 (15 U.S.C. 78u–
2 6(b)), as added by paragraph (1).

3 **SEC. 4. MISCELLANEOUS PROVISIONS.**

4 (a) CFTC WHISTLEBLOWER PROGRAM EDUCATION
5 INITIATIVES.—Section 23(g)(2) of the Commodity Ex-
6 change Act (7 U.S.C. 26(g)(2)) is amended—

7 (1) in subparagraph (A), by striking “and” at
8 the end;

9 (2) in subparagraph (B), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(C) the funding of initiatives designed to
13 educate stakeholders regarding the incentives
14 and protections available under this section, in-
15 cluding the benefits of those incentives and pro-
16 tections.”.

17 (b) DEPOSITS INTO CFTC CONSUMER PROTECTION
18 FUND.—Section 23(g)(3)(A) of the Commodity Exchange
19 Act (7 U.S.C. 26(g)(3)(A)) is amended by striking
20 “\$100,000,000” and inserting “\$150,000,000”.

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

25 (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 con-

1 fidentiality as the Commission deter-
2 mines appropriate.”.

3 (d) TECHNICAL CORRECTIONS.—

4 (1) REVIEW.—Section 23(f)(3) of the Com-
5 modity Exchange Act (7 U.S.C. 26(f)(3)) is amend-
6 ed by striking “section 7064” and inserting “section
7 706”.

8 (2) EXISTING COMMODITIES PROVISION.—

9 (A) IN GENERAL.—Section 21F of the Se-
10 curities Exchange Act of 1934 (15 U.S.C. 78u-
11 6) is amended by adding at the end the fol-
12 lowing:

13 “(k) NONENFORCEABILITY OF CERTAIN PROVISIONS
14 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
15 TRATION.—

16 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
17 rights and remedies provided in this section may not
18 be waived by any agreement, policy form, or condi-
19 tion of employment, including by a predispute arbi-
20 tration agreement.

21 “(2) PREDISPUTE ARBITRATION AGREEMENT.—
22 No predispute arbitration agreement shall be valid
23 or enforceable if the agreement requires the arbitra-
24 tion of a dispute arising under this section.”.

1 (B) APPLICABILITY.—Subsection (k) of
2 section 21F of the Securities Exchange Act of
3 1934 (15 U.S.C. 78u–6), as added by subpara-
4 graph (A), shall apply with respect to any ac-
5 tion that is filed on or after, or that is pending
6 as of, the date of enactment of this Act.

7 (e) CLARIFICATIONS REGARDING PERFORMANCE
8 EVALUATIONS FOR THE FOREIGN SERVICE.—Section
9 2302(a)(2)(viii) of title 5, United States Code, is amended
10 by striking “or under title 38” and inserting “, under title
11 38, or under the Foreign Service Act of 1980 (22 U.S.C.
12 3901 et seq.)”.

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