

SAGE COUNSEL

TIPS FOR CORPORATE WHISTLEBLOWER COUNSEL

Q: *What is rule 21F-17 of the Securities Exchange Act and how does it relate to retaliation against whistleblowers?*

A: Section 21F of the Securities Exchange Act of 1934 outlines the rules and regulations of the SEC Whistleblower Program. In 21F-17, the rules specifically set forth that no one can “take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement...” While there are narrow exceptions set out in the Act, this provision has been used successfully to take on entities using employment agreements to interfere with employees’ direct communications with the Commission.

Q: *What happens after whistleblowers file a submission with the SEC?*

A: Initially, all SEC Whistleblower Program tips are reviewed by the Office of Market Intelligence for apparent reliability, detail and potential violations of the federal securities laws. The professionals in that office determine whether each tip should be assessed by experts in another division, given to an investigative team or referred to another law enforcement or regulatory organization. The most promising tips are assigned to investigative staff in the Enforcement Division, who conduct a more detailed review and determine whether the alleged misconduct warrants a formal investigation. Even if the tip doesn’t lead to the opening of an examination or investigation, the information SEC whistleblowers provide to the Commission is retained and may be relied upon in the future if new evidence is discovered.