

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—

1 “(I) a person with supervisory
 2 authority over the whistleblower at the
 3 employer of the whistleblower, if that
 4 employer is an entity registered with,
 5 or required to be registered with, the
 6 Commission, a self-regulatory organi-
 7 zation, or a State securities commis-
 8 sion or office performing like func-
 9 tions; or

10 “(II) another individual working
 11 for the employer described in sub-
 12 clause (I) who the whistleblower rea-
 13 sonably believes has the authority—

14 “(aa) to investigate, dis-
 15 cover, or terminate the mis-
 16 conduct; or

17 “(bb) to take any other ac-
 18 tion to address the misconduct.”.

19 (b) SECURITIES.—Section 21F of the Securities Ex-
 20 change Act of 1934 (15 U.S.C. 78u-6) is amended—

21 (1) in subsection (a)(6)—

22 (A) by striking “The term” and inserting
 23 the following:

24 “(A) IN GENERAL.—The term”; and

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

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

7 (A) in clause (ii), by striking “or” at the
 8 end;

9 (B) in clause (iii), by striking the period at
 10 the end and inserting “; or”; and

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

12 “(iv) in providing information regard-
 13 ing any conduct that the whistleblower rea-
 14 sonably believes constitutes a violation of
 15 any law, rule, or regulation subject to the
 16 jurisdiction of the Commission to—

17 “(I) a person with supervisory
 18 authority over the whistleblower at the
 19 employer of the whistleblower, if that
 20 employer is an entity registered with,
 21 or required to be registered with, the
 22 Commission, a self-regulatory organi-
 23 zation, or a State securities commis-
 24 sion or office performing like func-
 25 tions; 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

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

3 “(ii) MULTIPLE ACTIONS.—If a cov-
4 ered judicial or administrative action in-
5 volves 1 or more related actions, the re-
6 quirement under clause (i) shall apply with
7 respect to the latest deadline with respect
8 to the actions.

9 “(B) EXCEPTIONS.—

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

1 “(ii) ADDITIONAL EXTENSIONS.—If,
2 after providing an extension under clause
3 (i), the Director, or the designee of the Di-
4 rector, determines that the Commission
5 cannot reasonably satisfy the requirement
6 under subparagraph (A) with respect to an
7 award claim, as extended under that
8 clause, the Director or the designee, as ap-
9 plicable, after providing notice to the
10 Chairman, may extend the period in which
11 the Commission may satisfy subparagraph
12 (A) by 1 additional 180-day period.

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

22 “(C) APPLICABILITY.—This paragraph
23 shall apply only to an award claim that is time-
24 ly 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)—

1 (A) in subclause (II), by striking “jurisdic-
2 tion;” and inserting the following: “jurisdiction,
3 including—

4 “(aa) the Federal Trade
5 Commission;

6 “(bb) the Internal Revenue
7 Service; and

8 “(cc) the Department of
9 State;”; and

10 (B) in subclause (VI), by inserting “or
11 other foreign law enforcement authority” before
12 the period at the end; and

13 (2) in clause (ii)—

14 (A) by striking “Each” and inserting the
15 following:

16 “(I) IN GENERAL.—Each”;

17 (B) in subclause (I) (as so designated), by
18 inserting “subclauses (I) through (V) of” before
19 “clause (i)”; and

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

21 “(II) FOREIGN AUTHORITIES.—

22 An entity described in subclause (VI)
23 of clause (i) shall maintain informa-
24 tion described in that clause in ac-
25 cordance with such assurances of con-

1 confidentiality 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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