

[DISCUSSION DRAFT]

112TH CONGRESS
1ST SESSION

H. R. _____

To amend the whistleblower incentive and protection provisions of the Securities Exchange Act of 1934 and the Commodity Exchange Act to [to be provided]

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIMM introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the whistleblower incentive and protection provisions of the Securities Exchange Act of 1934 and the Commodity Exchange Act to [to be provided]

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. AMENDMENTS TO THE SECURITIES EXCHANGE**

4 **ACT OF 1934.**

5 (a) EXCLUSION OF CERTAIN COMPLIANCE OFFICERS

6 AND INTERNAL REPORTING AS A CONDITION OF

7 AWARD.—Section 21F of the Securities Exchange Act of

8 1934 (15 U.S.C. 78u–6) is amended—

1 (1) in subsection (b), by redesignating para-
2 graph (2) as paragraph (3) and inserting after para-
3 graph (1) the following:

4 “(2) INTERNAL REPORTING REQUIRED.—In the
5 case of a whistleblower who is an employee providing
6 information relating to misconduct giving rise to the
7 violation of the securities laws that was committed
8 by his or her employer or another employee of the
9 employer, to be eligible for an award under this sec-
10 tion, the whistleblower, or any person obtaining re-
11 portable information from the whistleblower, shall—

12 “(A) first report the information described
13 in paragraph (1) to his or her employer before
14 reporting such information to the Commission;
15 and

16 “(B) report such information to the Com-
17 mission not later than 180 days after reporting
18 the information to the employer.”; and

19 (2) in subsection (c)(2)—

20 (A) in subparagraph (C), by striking “or”
21 at the end; and

22 (B) by redesignating subparagraph (D) as
23 subparagraph (F) and inserting after subpara-
24 graph (C) the following:

1 “(D) to any whistleblower who fails to first
2 report the information described in subsection
3 (b)(1) that is the basis for the award to his or
4 her employer before reporting such information
5 to the Commission, in the case where the mis-
6 conduct giving rise to the violation of the secu-
7 rities laws was committed by such employer or
8 an employee of the employer, unless the whistle-
9 blower alleges and the Commission determines
10 that the employer lacks either a policy prohib-
11 iting retaliation for reporting potential mis-
12 conduct or an internal reporting system allow-
13 ing for anonymous reporting, or the Commis-
14 sion determines in a preliminary investigation
15 not exceeding 30 days that internal reporting
16 was not a viable option for the whistleblower
17 based on—

18 “(i) evidence that the alleged mis-
19 conduct was committed by or involved the
20 complicity of the highest level of manage-
21 ment; or

22 “(ii) other evidence of bad faith on
23 the part of the employer;

24 “(E) to any whistleblower who has legal,
25 compliance, or similar responsibilities for or on

1 behalf of an entity and has a fiduciary or con-
2 tractual obligation to investigate or respond to
3 internal reports of misconduct or violations or
4 to cause such entity to investigate or respond to
5 the misconduct or violations, if the information
6 learned by the whistleblower during the course
7 of his or her duties was communicated to such
8 a person with the reasonable expectation that
9 such person would take appropriate steps to so
10 respond; and”.

11 (b) **ELIMINATION OF MINIMUM AWARD REQUIRE-**
12 **MENT.**—Subsection (b)(1) of such section is amended—

13 (1) by striking “shall” and inserting “may”;
14 and

15 (2) by striking “in an aggregate amount equal
16 to—” and all that follows and inserting “an amount
17 determined by the Commission but not more than 30
18 percent, in total, of what has been collected of the
19 monetary sanctions imposed in the action or related
20 actions.”.

21 (c) **EXCLUSION OF WHISTLEBLOWERS FOUND CUL-**
22 **PABLE.**—Subsection (c)(2)(B) of such section is amended
23 by inserting “, is found civilly liable, or is otherwise deter-
24 mined by the Commission to have committed, facilitated,

1 participated in, or otherwise been complicit in misconduct
2 related to such violation” after “violation”.

3 (d) PROHIBITION ON CONTINGENCY FEES BY AT-
4 TORNEYS.—Subsection (d)(1) of such section is amended
5 by adding at the end the following: “Counsel may not rep-
6 resent a whistleblower in such claims on a contingency fee
7 basis.”.

8 (e) RULE OF CONSTRUCTION RELATING TO OTHER
9 WORKPLACE POLICIES.—Subsection (h)(1) of such sec-
10 tion is amended by adding at the end the following:

11 “(D) RULE OF CONSTRUCTION.—Nothing
12 in this paragraph shall be construed as prohib-
13 iting or restricting any employer from enforcing
14 any established employment agreements, work-
15 place policies, or codes of conduct against a
16 whistleblower, and any adverse action taken
17 against a whistleblower for any violation of such
18 agreements, policies, or codes shall not con-
19 stitute retaliation for purposes of this para-
20 graph, provided such agreements, policies, or
21 codes are enforced consistently with respect to
22 other employees who are not whistleblowers.”.

23 (f) NOTIFICATION TO EMPLOYER.—Paragraph (2) of
24 subsection (h) of such section is amended—

1 (1) in the paragraph heading, by striking “CON-
2 FIDENTIALITY” and inserting “NOTIFICATION TO
3 EMPLOYER AND CONFIDENTIALITY”;

4 (2) by redesignating subparagraph (A) through
5 (D) as subparagraphs (B) through (E), respectively;

6 (3) by inserting a new subparagraph (A) as fol-
7 lows:

8 “(A) NOTIFICATION OF INVESTIGATION.—

9 “(i) NOTIFICATION REQUIRED.—Prior
10 to commencing any enforcement action re-
11 lating in whole or in part to any informa-
12 tion reported to it by a whistleblower, the
13 Commission shall notify any entity that is
14 to be subject to such action of information
15 received by the Commission from a whistle-
16 blower who is an employee of such entity
17 to enable the entity to investigate the al-
18 leged misconduct and take remedial action,
19 unless the Commission determines in the
20 course of a preliminary investigation of the
21 alleged misconduct, not exceeding 30 days,
22 that such notification would jeopardize
23 necessary investigative measures and im-
24 pede the gathering of relevant facts, based
25 on—

1 “(I) evidence that the alleged
2 misconduct was committed by or in-
3 volved the complicity of the highest
4 level management of the entity; or

5 “(II) other evidence of bad faith
6 on the part of the entity.

7 “(ii) GOOD FAITH.—Where an entity
8 notified under clause (i) responds in good
9 faith, which may include conducting an in-
10 vestigation, reporting results of such an in-
11 vestigation to the Commission, and taking
12 appropriate corrective action, the Commis-
13 sion shall treat the entity as having self-re-
14 ported the information and its actions in
15 response to such notification shall be eval-
16 uated in accordance with the Commission’s
17 policy statement entitled ‘Report of Inves-
18 tigation Pursuant to Section 21(a) of the
19 Securities Exchange Act of 1934 and
20 Statement of the Relationship of Coopera-
21 tion to Agency Enforcement Decisions’.”;
22 and

23 (4) in the heading of subparagraph (B) (as re-
24 designated by paragraph (3)), by striking “IN GEN-
25 ERAL” and inserting “CONFIDENTIALITY”.

1 **SEC. 2. AMENDMENTS TO THE COMMODITY EXCHANGE**
2 **ACT.**

3 (a) **EXCLUSION OF CERTAIN COMPLIANCE OFFICERS**
4 **AND INTERNAL REPORTING AS A CONDITION OF**
5 **AWARD.**—Section 23 of the Commodity Exchange Act (7
6 U.S.C. 26) is amended—

7 (1) in subsection (b), by redesignating para-
8 graph (2) as paragraph (3) and inserting after para-
9 graph (1) the following:

10 “(2) **INTERNAL REPORTING REQUIRED.**—In the
11 case of a whistleblower who is an employee providing
12 information relating to misconduct giving rise to the
13 violation of the securities laws that was committed
14 by his or her employer or another employee of the
15 employer, to be eligible for an award under this sec-
16 tion, the whistleblower, or any person obtaining re-
17 reportable information from the whistleblower, shall—

18 “(A) first reported the information de-
19 scribed in paragraph (1) to his or her employer
20 before reporting such information to the Com-
21 mission; and

22 “(B) report such information to the Com-
23 mission not later than 180 days after reporting
24 the information to the employer.”; and

25 (2) in subsection (c)(2)—

1 (A) in subparagraph (C), by striking “or”
2 at the end; and

3 (B) by redesignating subparagraph (D) as
4 subparagraph (F) and inserting after subpara-
5 graph (C) the following:

6 “(D) to any whistleblower who fails to first
7 report the information described in subsection
8 (b)(1) that is the basis for the award to his or
9 her employer before reporting such information
10 to the Commission, in the case where the mis-
11 conduct giving rise to the violation of the secu-
12 rities laws was committed by such employer or
13 an employee of the employer, unless the whistle-
14 blower alleges and the Commission determines
15 that the employer lacks either a policy prohib-
16 iting retaliation for reporting potential mis-
17 conduct or an internal reporting system allow-
18 ing for anonymous reporting, or the Commis-
19 sion determines in a preliminary investigation
20 not exceeding 30 days that internal reporting
21 was not a viable option for the whistleblower
22 based on—

23 “(i) evidence that the alleged mis-
24 conduct was committed by or involved the

1 complicity of the highest level of manage-
2 ment; or

3 “(ii) other evidence of bad faith on
4 the part of the employer;

5 “(E) to any whistleblower who has legal,
6 compliance, or similar responsibilities for or on
7 behalf of an entity and has a fiduciary or con-
8 tractual obligation to investigate or respond to
9 internal reports of misconduct or violations or
10 to cause such entity to investigate or respond to
11 the misconduct or violations, if the information
12 learned by the whistleblower on the course of
13 his or her duties was communicated to such a
14 person with the reasonable expectation that
15 such person would take appropriate steps to so
16 respond; and”.

17 (b) CAP ON AWARD IN CERTAIN CIRCUMSTANCES
18 AND ELIMINATION OF MINIMUM AWARD REQUIRE-
19 MENT.—Subsection (b)(1) of such section is amended—

20 (1) by striking “shall” and inserting “may”;
21 and

22 (2) by striking “in an aggregate amount equal
23 to—” and all that follows and inserting “in an
24 amount determined by the Commission but not more
25 than 30 percent, in total, of what has been collected

1 of the monetary sanctions imposed in the action or
2 related actions.”.

3 (c) EXCLUSION OF WHISTLEBLOWERS FOUND CUL-
4 PABLE.—Subsection (c)(2)(B) of such section is amended
5 by inserting “, is found civilly liable, or is otherwise deter-
6 mined by the Commission to have committed, facilitated,
7 participated in, or been complicit in misconduct related to
8 such a violation” after “violation”.

9 (d) PROHIBITION ON CONTINGENCY FEES BY AT-
10 TORNEYS.—Subsection (d)(1) of such section is amended
11 by adding at the end the following: “Counsel may not rep-
12 resent a whistleblower in such claims on a contingency fee
13 basis.”.

14 (e) RULE OF CONSTRUCTION RELATING TO OTHER
15 WORKPLACE POLICIES.—Subsection (h)(1) of such sec-
16 tion is amended by adding at the end the following:

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18 in this paragraph shall be construed as prohib-
19 iting or restricting any employer from enforcing
20 any established employment agreements, work-
21 place policies, or codes of conduct against a
22 whistleblower, and any adverse action taken
23 against a whistleblower for any violation of such
24 agreements, policies, or codes shall not con-
25 stitute retaliation for purposes of this para-

1 graph, provided such agreements, policies, or
2 codes are enforced consistently with respect to
3 other employees who are not whistleblowers.”.

4 (f) NOTIFICATION TO EMPLOYER.—Paragraph (2) of
5 subsection (h) of such section is amended—

6 (1) in the paragraph heading, by striking “CON-
7 FIDENTIALITY” and inserting “NOTIFICATION TO
8 EMPLOYER AND CONFIDENTIALITY”;

9 (2) by redesignating subparagraph (A) through
10 (D) as subparagraphs (B) through (E), respectively;

11 (3) by inserting a new subparagraph (A) as fol-
12 lows:

13 “(A) NOTIFICATION TO EMPLOYER.—

14 “(i) NOTIFICATION REQUIRED.—Prior
15 to commencing any enforcement action re-
16 lating in whole or in part to any informa-
17 tion reported to it by a whistleblower, the
18 Commission shall promptly notify any enti-
19 ty that is to be subject to such enforce-
20 ment of information received by the Com-
21 mission from a whistleblower who is an
22 employee of such entity to enable the enti-
23 ty to investigate the alleged misconduct
24 and take remedial action, unless the Com-
25 mission determines in the course of a pre-

1 liminary investigation not exceeding 30
2 days of the alleged misconduct, that such
3 notification would jeopardize necessary in-
4 vestigative measures and impede the gath-
5 ering of relevant facts, based on—

6 “(I) evidence that the alleged
7 misconduct was committed by or in-
8 volved the complicity of the highest
9 level management of the entity; or

10 “(II) other evidence of bad faith
11 on the part of the entity.

12 “(ii) GOOD FAITH.—Where an entity
13 notified under clause (i) responds in good
14 faith, which may include conducting an in-
15 vestigation, reporting results of such an in-
16 vestigation to the Commission, and taking
17 appropriate corrective action, the Commis-
18 sion shall treat the entity as having self-re-
19 ported the information and its actions in
20 response to such notification shall be eval-
21 uated accordingly.”; and

22 (4) in the heading of subparagraph (B) (as re-
23 designated by paragraph (3)), by striking “IN GEN-
24 ERAL” and inserting “CONFIDENTIALITY”.

1 **SEC. 3. STUDY.**

2 The Comptroller General shall conduct a study to de-
3 termine what impact, if any, the whistleblower incentives
4 program established under section 21F of the Securities
5 Exchange Act of 1934 (15 U.S.C. 78u-6) and section 23
6 of the Commodity Exchange Act (7 U.S.C. 26) has had
7 on shareholder value. The Comptroller General shall
8 transmit to Congress a report on the study not later than
9 18 months after the date of enactment of this Act