

# Regulatory and Enforcement Alert

## SEC Settles Charges Against Investment Firm for Violating Dodd-Frank Whistleblower Protections

June 29, 2021

### Key Takeaways

- The SEC's enforcement of Rule 21F-17 reaffirms the SEC's belief that whistleblowing is critical to its enforcement program.
- Companies should ensure that they do not maintain internal policies that can be read to impede whistleblowers.

The SEC recently announced that it settled administrative charges against an Investment Firm for violations of Exchange Act Rule 21F-17.<sup>1</sup> Rule 21F-17, which seeks to ensure the SEC's unfettered access to whistleblowers, specifically prohibits "tak[ing] 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 . . . with respect to such communications." The rule was adopted pursuant to authority granted by the Dodd-Frank Act, and became effective in August 2011.

In its order, the SEC found that from at least April 2016 until July 2020, the Firm's compliance manual included a requirement that employees obtain the approval of the Firm's Legal or Compliance Department before initiating contact with regulators, including the SEC. Although the policy did not expressly prohibit whistleblower communications, and the SEC noted that it was not aware of any specific instances in which a Firm employee actually refrained from communicating with the SEC about potential violations of the securities laws (or that the Firm ever took action to enforce the provision of the manual), the SEC nevertheless concluded that the language in the manual undermined the purpose of Rule 21F-17.

Without admitting or denying the charges, the Firm agreed to a cease-and-desist order, censure, and payment of a civil penalty of \$208,912. The SEC acknowledged that its settlement took into consideration the Firm's prompt remedial action and its cooperation with the SEC, including removing the offending language from the Firm's

<sup>1</sup> See *In re Guggenheim Securities LLC*, Release No. 92237, 2021 WL 2581714 (June 23, 2021).

compliance manual and adding a provision that affirmatively advises employees of their right to communicate with regulators if they are concerned about potential violations of laws or regulations.

The enforcement action against the Firm is the first brought under Rule 21F-17 since January 2017. The case demonstrates the SEC's renewed willingness to bring an enforcement action under Rule 21F-17, and affirms the SEC's position that whistleblowers are an integral component of its enforcement program. Companies should ensure that internal policies—written or otherwise—cannot be read or understood (even if not intended) to constrain the ability of employees to communicate with regulators about possible securities law violations.

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