
Federal

Whistleblower

Laws and

Regulations

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Washington, D.C.

THE NATIONAL WHISTLEBLOWER CENTER

The National Whistleblower Center (NWC) is a not-for-profit public interest organization. Founded in 1988, the NWC conducts educational programs in order to provide the public with information on the laws governing whistleblower protection. In conjunction with the National Whistleblower Legal Defense and Education Fund, the NWC sponsors a website which provides information on pending legislation, publications, referrals and employee rights. For more information please contact the NWC at:

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Introduction

Over the past forty years, the federal government has enacted over ninety laws and regulations covering whistleblowers. Yet, no single uniform national whistleblower law exists. Consequently, whistleblowers who seek protection under federal law must navigate through a maze of often obscure rules and regulations governing their conduct. This volume sets forth the text of these laws and regulations, and also includes additional useful information such as a resource list and model discovery requests.

The scope of federal protections afforded under these various laws are extremely diverse and depend on the following general factors:

1. Who is the employer?
2. What is the substance of the whistleblower disclosure?
3. Where is the allegation filed?

The different level of protection afforded to employees under various federal laws can be extremely significant. For example, some federal laws have short statutes of limitation (thirty days), while others permit a whistleblower six years to file a claim. Likewise, some laws only provide for reinstatement and back pay, while others permit the employee to obtain a host of remedies, such as compensatory and punitive damages. Although most of the federal whistleblower laws protect private sector employees, some are limited to covering federal and/or public sector employees.

In order to assist employees or their counsel in the identification of federal statutes and regulations which may apply to a whistleblower disclosure, this book compiles, for the first time, a copy of all federal statutes and regulations applicable to whistleblowers. This compilation of laws and regulations is intended to be read together with the treatises *Concepts and Procedures in Whistleblower Law* (Greenwood Press, 2001) and *Whistleblower Law: A Guide to Legal Protections for Corporate Employees* (Praeger, 2004), which set forth a comprehensive legal analysis of these statutory and regulatory provisions. In addition, *Concepts and Procedures* also outlines the protections available to whistleblower under various state law protections and the federal and state *qui tam* laws.

SECTION 1

CONSTITUTIONAL PROTECTION/ FREEDOM OF SPEECH

First Amendment, U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment, U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1871, Section 1

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officers judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Civil Rights Act of 1871, Sections 2 and 3**42 U.S.C. § 1985 (2) and (3)**

(2) *Obstructing justice; intimidating party, witness, or juror.* If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified

* * *

(3) * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Civil Rights Attorneys Fee Act**42 U.S.C. § 1988(b) and (c)**

(b) Attorney's fees. In any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], or section 40302 of the Violence Against Women Act of 1994, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction

(c) Expert fees. In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

SECTION 2
CORPORATE/FINANCIAL/MANUFACTURING
WHISTLEBLOWER PROTECTIONS

Consumer Product Safety Act of 2008
Whistleblower Protection
H.R. 4040 Section 219
15 U.S.C. § _____

SEC. 219. WHISTLEBLOWER PROTECTIONS.

(a) In General.--The Act (15 U.S.C. 2051 et seq.), as amended by section 206 of this Act, is further amended by adding at the end the following:
whistleblower protection

Sec. 40. **(a)** No manufacturer, private labeler, distributor, or retailer, may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)--

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person

named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation--

- (i) to take affirmative action to abate the violation;
- (ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
- (iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including--

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or

in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this Act or any other law enforced by the Commission.'

(b) Conforming Amendment.--The table of contents, as amended by section 206 of this Act, is further amended by inserting after the item relating to section 39 the following:

Sec.40. Whistleblower protection.

Corporate and Criminal Fraud Accountability Act

Sec. 806, Sarbanes-Oxley Act of 2002

Protection for employees of publicly traded companies who provide evidence of fraud.

18 U.S.C. § 1514A

(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES- No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee--

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

- (A) a Federal regulatory or law enforcement agency;
 - (B) any Member of Congress or any committee of Congress; or
 - (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (2)** to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.
- (b) ENFORCEMENT ACTION-(1) IN GENERAL-** A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by--(A) filing a complaint with the Secretary of Labor; or(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.
- (2) PROCEDURE**
- (A) IN GENERAL-** An action under paragraph (1) (A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.
- (B) EXCEPTION-** Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.
- (C) BURDENS OF PROOF-** An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.
- (D) STATUTE OF LIMITATIONS-** An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.
- (c) REMEDIES-(1) IN GENERAL-** An employee prevailing in any action under subsection (b) (1) shall be entitled to all relief necessary to make the employee whole.**(2) COMPENSATORY DAMAGES-** Relief for any action under paragraph (1) shall include—
- (A)** reinstatement with the same seniority status that the employee would have had, but for the discrimination;
 - (B)** the amount of back pay, with interest; and
 - (C)** compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.
- (d) RIGHTS RETAINED BY EMPLOYEE-** Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

Corporate Responsibility
Sec. 301, Sarbanes-Oxley Act of 2002
Audit Committee
15 U.S.C. § 78j-1 (4)

(4) COMPLAINTS- Each audit committee shall establish procedures for-
(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and
(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

Sec. 3(b)(1) of Sarbanes-Oxley*
Enforcement
15 U.S.C. § 7202(b)(1)

(b)(1) A violation by any person of this Act [the Sarbanes-Oxley Act], any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued there under, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

Corporate Responsibility
Sec. 307, Sarbanes-Oxley Act of 2002
Rules of Professional Responsibility for Attorneys
15 U.S.C. § 7245

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and
(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

**Standards Relating To Listed Audit Committees
Securities And Exchange Commission
Final Rule
68 Federal Register 18788-01**

Federal Register pg. 18789 - 18790

I. Background and Overview of the New Rule and Amendments

In this release, we implement Section 10A (m) (1) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), which requires us to direct, by rule, the national securities exchanges and national securities associations (or "SROs") to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. We received over 185 comments in response to our release proposing to implement the directive in Section 10A(m) of the Exchange Act. The final rule and form amendments we adopt today have been revised, as discussed in this release, to incorporate a number of changes recommended by commenter.

Accurate and reliable financial reporting lies at the heart of our disclosure-based system for securities regulation, and is critical to the integrity of the U.S. securities markets. Investors need accurate and reliable financial information to make informed investment decisions. Investor confidence in the reliability of corporate financial information is fundamental to the liquidity and vibrancy of our markets.

Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. The board of directors, elected by and accountable to shareholders, is the focal point of the corporate governance system. The audit committee, composed of members of the board of directors, plays a critical role in providing oversight over and serving as a check and balance on a company's financial reporting system. The audit committee provides independent review and oversight of a company's financial reporting processes, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices and internal controls, and that the outside auditors, through their own review, objectively assess the company's financial reporting practices.

Since the early 1940s, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees.¹⁸ It was largely with the Commission's encouragement, for instance, that the SROs first adopted audit committee requirements in the 1970s. Over the years, others have

expressed support for strong, independent audit committees, including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, and the General Accounting Office.

In 1998, the NYSE and the NASD sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to improve their effectiveness. In response to these recommendations, the NYSE and the NASD, among others, revised their listing standards relating to audit committees, and we adopted new rules requiring disclosure relating to the functioning, governance and independence of corporate audit committees. Beginning last year, at the Commission's request, the NYSE and the NASD again reviewed their corporate governance standards, including their audit committee rules, in light of several high-profile corporate failures, and have proposed changes to their rules to provide more demanding standards for audit committees.

Recent events involving alleged misdeeds by corporate executives and independent auditors have damaged investor confidence in the financial markets. They have highlighted the need for strong, competent and vigilant audit committees with real authority. In response to the threat to the U.S. financial markets posed by these events, Congress passed, and the President signed into law on July 30, 2002, the Sarbanes-Oxley Act. The Sarbanes-Oxley Act mandates sweeping corporate disclosure and financial reporting reform to improve the responsibility of public companies for their financial disclosures. This release is the most recent of several that we have issued to implement provisions of the Sarbanes-Oxley Act.

Under new Exchange Act Rule 10A-3, SROs will be prohibited from listing any security of an issuer that is not in compliance with the following standards, as discussed in more detail in this release:

- (1)** Each member of the audit committee of the issuer must be independent according to specified criteria;
- (2)** The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee;
- (3)** Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- (4)** Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and

(5) Each issuer must provide appropriate funding for the audit committee

Federal Register pg. 18798 Procedures for Handling Complaints

The audit committee must place some reliance on management for information about the company's financial reporting process. Since the audit committee is dependent to a degree on the information provided to it by management and internal and outside auditors, it is imperative for the committee to cultivate open and effective channels of information. Management may not have the appropriate incentives to self-report all questionable practices. A company employee or other individual may be reticent to report concerns regarding questionable accounting or other matters for fear of management reprisal. The establishment of formal procedures for receiving and handling complaints should serve to facilitate disclosures, encourage proper individual conduct and alert the audit committee to potential problems before they have serious consequences. Accordingly, under the listing standards called for by our final rules, each audit committee must establish procedures for:

(1) The receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters, and

(2) The confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters. As proposed, we are not mandating specific procedures that the audit committee must establish. Commenters were split over whether specific procedures should be mandated. The minority, representing primarily consultants and other third-party providers of such services, as well as several commenters representing investors, believed the Commission should mandate specific procedures, and many advocated a national "one-size-fits-all" approach. A substantial number of commenters, however, supported the Commission's approach of not mandating specific procedures, instead preferring to leave flexibility to the audit committee to develop appropriate procedures in light of a company's individual circumstances, so long as the required parameters are met.

Given the variety of listed issuers in the U.S. capital markets, we believe audit committees should be provided with flexibility to develop and utilize procedures appropriate for their circumstances. The procedures that will be most effective to meet the requirements for a very small listed issuer with few employees could be very different from the processes and systems that would need to be in place for large, multinational corporations with thousands of employees in many different jurisdictions. We do not believe that in this instance a "one-size-fits-all" approach would be appropriate. As noted in the Proposing Release, we expect each audit committee to develop procedures that work best consistent with its company's individual circumstances to meet the requirements in the final rule. Similarly, we are not adopting the suggestion of a few commenters that, despite the statutory language, the requirement should be limited to only employees in the financial reporting area. While the scope of the requirements generally includes complaints received by a listed issuer regardless of source, Exchange Act

Section 10A(m)(4)(B) and the relevant portion of the rules referring to confidential, anonymous submission of concerns are directed to employees of the issuer. One commenter noted that investment companies rarely have direct employees. The commenter suggested that, for investment companies, the confidential, anonymous submission requirements should extend to employees of entities engaged by an investment company to prepare or assist in preparing its financial statements. We encourage the SROs to consider the appropriate scope of the requirement with regard to investment companies, taking account of the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.

* * *

15 U.S.C. 78j-1(m) (1).

Pub. L. 107-204, 116 Stat. 745 (2002).

A "national securities exchange" is an exchange registered as such under Section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently nine national securities exchanges registered under Section 6(a) of the Exchange Act: American Stock Exchange (AMEX), Boston Stock Exchange, Chicago Board Options Exchange (CBOE), Chicago Stock Exchange, Cincinnati Stock Exchange, International Securities Exchange, New York Stock Exchange (NYSE), Philadelphia Stock Exchange and Pacific Exchange. In addition, an exchange that lists or trades security futures products (as defined in Exchange Act Section 3(a)(56) [15 U.S.C. 78c(56)]) may register as a national securities exchange under Section 6(g) of the Exchange Act solely for the purpose of trading security futures products. Regarding security futures products, see Section II.F.2.b.

(A) "national securities association" is an association of brokers and dealers registered as such under Section 15A of the Exchange Act [15 U.S.C. 78o-3]. The National Association of Securities Dealers (NASD) is the only national securities association registered with the Commission under Section 15A(a) of the Exchange Act. The NASD partially owns and operates The NASDAQ Stock Market (NASDAQ). NASDAQ has filed an application with the Commission to register as a national securities exchange. In addition, Section 15A(k) of the Exchange Act [15 U.S.C. 78o-3(k)] provides that a futures association registered under Section 17 of the Commodity Exchange Act [7 U.S.C. 21] shall be registered as a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act [15 U.S.C. 78o(b)(11)]. Regarding security futures products, see Section

II.F.2.b.

Release No. 33-8173 (Jan. 8, 2003) [68 FR 2638] ("Proposing Release"). The public comments we received, and a summary of the comments prepared by our staff (the "Comment Summary"), can be viewed in our Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549,

in File No. S7-02-03. Public comments submitted by electronic mail and the Comment Summary also are available on our website, www.sec.gov. In 1940, the Commission investigated the auditing practices of McKesson & Robbins, Inc., and the Commission's ensuing report prompted action on auditing procedures by the auditing community. In the Matter of McKesson & Robbins, Accounting Series Release (ASR) No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940). For example, in 1972, the Commission recommended that companies establish audit committees composed of outside directors. See ASR No. 123 (Mar. 23, 1972). In 1974 and 1978, the Commission adopted rules requiring disclosures about audit committees. See Release No. 34-11147 (Dec. 20, 1974) and Release No. 34-15384 (Dec. 6, 1978). See, e.g., Preliminary Report of the American Bar Association Task Force on Corporate Responsibility (July 16, 2002). The report is available on the American Bar Association's website at www.abanet.org/buslaw/.

The Treadway Commission was sponsored by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditors and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO. The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (October 1987), is available at www.coso.org. GAO, "CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies," at 5 (GAO/AFMD-89-38, March 1989). See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999). The Blue Ribbon Committee Report is available at www.nyse.com.

See, for example, Exchange Act Release No. 42231 (Dec. 14, 1999) [64 FR 71523] (NASDAQ rules) and Exchange Act Release No. 42233 (Dec. 14, 1999) (NYSE rules) [64 FR 71529]. See also Exchange Act Release No. 42232 (Dec. 14, 1999) [64 FR 71518] (American Stock Exchange rules) and Release No. 34-43941 (Feb. 7, 2001) [66 FR 10545] (Pacific Exchange rules).

See Exchange Act Release No. 42266 (Dec. 22, 1999) [64 FR 73389]. See Press Release No. 2002-23 (Feb. 13, 2002). See File Nos. SR-NASD-2002-141 and SR-NYSE-2002-33 (pending before the Commission). See, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public is More Wary Than Ever of Corporate America," USA Today, May 2, 2002; and Louis Aguilar, "Scandals Jolting Faith of Investors," Denver Post, June 27, 2002.

See, for example, John Good, "After Enron, Beef Up Those Audit Committees," The Commercial Appeal, Apr. 26, 2002; and "FT Comment After Enron: Giving Meaning to the Codes of Best Practice:

Corporate Governance: Companies Need Truly Independent Directors, Strong Audit Committees, an Outlet for Whistleblowers and Tight Controls on Share Options," *The Financial Times*, Feb. 19, 2002.

For example, see Release No. 34-46421 (Aug. 27, 2002) [67 FR 56462] (Ownership reports and trading by officers, directors and principal security holders); Release No. 33-8124 (Aug. 28, 2002) [67 FR 57276] (Certification of disclosure in companies' quarterly and annual reports); Release No. 33-46685 (Oct. 18, 2002) [67 FR 65325] (Proposals regarding improper influence on conduct of audits); Release No. 33-8138 (Oct. 22, 2002) [67 FR 66208] (Proposals regarding internal control reports); Release No. 33-8170 (Dec. 20, 2002) [67 FR 79466] (Proposals regarding mandated electronic filing and website posting for Forms 3, 4 and 5); Release No. 33-8176 (Jan. 22, 2003) [68 FR 4820] (Conditions for use of non-GAAP financial information); Release No. 34-47225 (Jan. 22, 2003) [68 FR 4338] (Insider trades during pension plan blackout periods); Release No. 33-8177 (Jan. 23, 2003) [68 FR 5110] (Disclosure regarding audit committee financial experts and company codes of ethics); Release No. 33-8180 (Jan. 24, 2003) [68 FR 4862] (Retention of records relevant to audits and reviews); Release No. 34-47262 (Jan. 27, 2003) [68 FR 5348] (Adoption of Form N-CSR); Release No. 33-8182 (Jan. 28, 2003) [68 FR 5982] (Disclosure about off-balance sheet arrangements); Release No. 33-8183 (Jan. 28, 2003) [68 FR 6006] (Strengthening the Commission's requirements regarding auditor independence); Release Nos. 33-8185 (Jan. 29, 2003) [68 FR 6296] and 33-8186 (Jan. 29, 2003) [68 FR 6324] (Implementation of standards of professional conduct for attorneys); and Release No. 33-8212 (Mar. 21, 2003) [68 FR 15600] (Certification of disclosure in certain Exchange Act reports).

The Sarbanes-Oxley Act provides additional protections for employees who provide evidence of fraud. See, for example, Section 806 of the Sarbanes-Oxley Act. Exchange Act Rule 10A-3 is not intended to preempt or supersede any other federal or state requirements relating to receipt and retention of records.

See, e.g., the Letters of Audit Concerns, Inc.; CalPERS; Michael Chenkin; Confidential Communications Services, LLC; David Gold; The HR Hotline, Inc.; SWIB; Teamsters.

See, e.g., the Letters of ABA; AICPA; American Bankers Association; Cleary; CSC; Deloitte; Edison Electric Institute; E&Y; FEI; ICI; NASDAQ; The Network, Inc.; NYCBA; NYSBA; PSEG; PwC; Ralph S. Saul; State Street Corporation. See, e.g., the Letter of S&C. See the Letter of PwC.

Compare Release No. 33-8185 (Jan. 29, 2003) (attorney employed by an investment adviser who prepares, or assists in preparing, materials for a registered investment company to be submitted to or filed with the Commission by or on behalf of the investment company is appearing and practicing before the Commission); Release No. 34-47262 (Jan. 27, 2003) (disclosure required of code of ethics applicable to the principal executive officer and financial officer of a registered management

investment company, or persons performing similar functions, regardless of whether they are employees of the investment company or a third party).

**Credit Union,
Employee Protection Provision
12 U.S.C. § 1790b**

(a) Prohibition against discrimination against whistleblowers. No federally insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or to the Attorney General regarding a possible violation of any law or regulation by the credit union or any of its officers, directors, or employees.

(1) Employees of credit unions. No insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or the Attorney General regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.

(2) Employees of the Administration. The Administration may not discharge or otherwise discriminate against any employee (including any employee of the National Credit Union Central Liquidity Facility) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Administration or the Attorney General regarding any possible violation of any law or regulation by

(A) any credit union or the Administration;

(B) any director, officer, committee member, or employee of any credit union; or

(C) any officer or employee of the Administration.

(b) Enforcement. Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) of this section may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the Board.

(c) Remedies. If the district court or the Administration determines that a violation of subsection **(a)** of this section has occurred, it may order the credit union or the Administration which committed the violation C

(1) to reinstate the employee to his former position,

(2) to pay compensatory damages, or

(3) take other appropriate actions to remedy any past discrimination

(d) Limitations. The protections of this section shall not apply to any employee who

(1) deliberately causes or participates in the alleged violation of law or regulation, or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

FDIC,

Depository institution employee protection remedy

12 U.S.C. § 1831j

(a) In general.

(1) Employees of depository institutions. No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding

(A) a possible violation of any law or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; by the depository institution or any director, officer, or employee of the institution.

(2) Employees of banking agencies. No Federal banking agency, Federal home loan bank, Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by

(A) any depository institution or any such bank or agency;

(B) any director, officer, or employee of any depository institution or any such bank;

(C) any officer or employee of the agency which employs such employee; or

(D) the person, or any officer or employee of the person, who employs such employee.

(b) Enforcement. Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) of this section may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

(c) Remedies. If the district court determines that a violation of subsection (a) of this section has occurred, it may order the depository institution, Federal home loan bank, Federal Reserve bank, or Federal banking agency which committed the violation

(1) to reinstate the employee to his former position;

(2) to pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) Limitation. The protections of this section shall not apply to any employee who

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(e) A Federal banking agency defined

For purposes of subsections (a) and (c) of this section, the term a Federal banking agency means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.

(f) Burdens of proof. The legal burdens of proof that prevail under subchapter III of chapter 12 of title 5 shall govern adjudication of protected activities under this section.

**Monetary Transactions, Whistleblower
Protection Provision (amended version)**

31 U.S.C. § 5328

(a) Prohibition against discrimination. No financial institution or nonfinancial trade or business may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this subchapter or section 1956, 1957, or 1960 of title 18, or any regulation under any such provision, by the financial institution or nonfinancial trade or business or any director, officer, or employee of the financial institution or nonfinancial trade or business.

(b) Enforcement. Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2 year period beginning on the date of such discharge or discrimination.

(c) Remedies. If the district court determines that a violation has occurred, the court may order the financial institution or non-financial trade or business which committed the violation to

(1) reinstate the employee to the employee's former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) Limitation. The protections of this section shall not apply to any employee who

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

(e) Coordination with other provisions of law. This section shall not apply with respect to any financial institution or non-financial trade or business which is subject to section 33 of the Federal Deposit Insurance

Act, section 213 of the Federal Credit Union Act, or section 21A(q) of the Home Owners' Loan Act (as added by section 251(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991).

Corporate and Criminal Fraud Accountability Act

Sec. 806, Sarbanes-Oxley Act of 2002

Final Rule

29 CFR Part 1980

U.S. Department of Labor

Vol. 69 Federal Register 52104 (August 24, 2004)

PART 1980 -- PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002

Subpart ACComplaints, Investigations, Findings and Preliminary Orders
Sec.

1980.100 Purpose and scope.

1980.101 Definitions.

1980.102 Obligations and prohibited acts.

1980.103 Filing of discrimination complaint.

1980.104 Investigation.

1980.105 Issuance of findings and preliminary orders.

Subpart BCLitigation

1980.106 Objections to the findings and the preliminary order and request for a hearing.

1980.107 Hearings.

1980.108 Role of Federal agencies.

1980.109 Decision and orders of the administrative law judge.

1980.110 Decision and orders of the Administrative Review Board.

Subpart CCMiscellaneous Provisions

1980.111 Withdrawal of complaints, objections, and findings; settlement.

1980.112 Judicial review.

1980.113 Judicial enforcement.

1980.114 District Court jurisdiction of discrimination complaints.

1980.115 Special circumstances; waiver of rules.

Subpart A Complaints, Investigations, Findings and Preliminary Orders*

§ 1980.100 Purpose and scope.

(a) This part implements procedures under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes Oxley Act of 2002 (>>Sarbanes Oxley'' or >>Act''), enacted into law July 30, 2002. Sarbanes Oxley provides for employee protection from discrimination by companies and representatives of companies because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or

any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) This part establishes procedures pursuant to Sarbanes Oxley for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under Sarbanes Oxley, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post hearing administrative review, and withdrawals and settlements.

§ 1980.101 Definitions.

(a) Act means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes Oxley Act of 2002, Public Law No.107B204, July 30, 2002, codified at 18 U.S.C. 1514A.

(b) Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(c) Company means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(d) Company representative means any officer, employee, contractor, subcontractor, or agent of a company.

(e) Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

(f) Employee means an individual presently or formerly working for a company or company representative, an individual applying to work for a company or company representative, or an individual whose employment could be affected by a company or company representative.

(g) Named person means the employer and/or the company or company representative named in the complaint who is alleged to have violated the Act.

(h) OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

(i) Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons. Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1980.102 Obligations and prohibited acts.

(a) No company or company representative may discharge, demote, suspend, threaten, harass or in any other manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, has engaged in any of the activities specified in paragraphs (b) (1) and (2) of this section.

(b) An employee is protected against discrimination (as described in paragraph (a) of this section) by a company or company representative for any lawful act:

(1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by:

- (i) A Federal regulatory or law enforcement agency;
 - (ii) Any Member of Congress or any committee of Congress; or
 - (iii) A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

§ 1980.103 Filing of discrimination complaint.

(a) Who may file. An employee who believes that he or she has been discriminated against by a company or company representative in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) Nature of filing. No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) Place of filing. The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: <http://www.osha.gov>.

(d) Time for filing. Within 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the complaint is filed in person, by hand delivery or other means, the complaint is filed upon receipt.

§ 1980.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person (or named persons) of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary also will notify the named person of its right under paragraphs (b) and (c) of

this section and paragraph (e) of ' 1980.110. A copy of the notice to the named person will also be provided to the Securities and Exchange Commission.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

- (i)** The employee engaged in a protected activity or conduct;
- (ii)** The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;
- (iii)** The employee suffered an unfavorable personnel action; and
- (iv)** The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, i.e., to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint shall not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the named person may request a meeting with the Assistant Secretary to present its position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e) Prior to the issuance of findings and a preliminary order as provided for in ' 1980.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe

that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of its position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1980.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include all relief necessary to make the employee whole, including, where appropriate: reinstatement with the same seniority status that the employee would have had but for the discrimination; back pay with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and preliminary order will be effective 30 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided

at ' 1980.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B Litigation

§ 1980.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to paragraph (b) of ' 1980.105. The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order. The named person may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1980.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties.

Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1980.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the named person.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Securities and Exchange Commission may participate as amicus curiae at any time in the proceedings, at the Commission's discretion. At the request of the Securities and Exchange Commission, copies of all pleadings in a case must be sent to the Commission, whether or not the Commission is participating in the proceeding.

§ 1980.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to ' 1980.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order will provide all relief necessary to make the employee whole, including reinstatement of the complainant to that

person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and will not be stayed. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (the Board), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board, unless the Board grants a motion to stay the order. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the administrative law judge. *Ci.e.*, 10 business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to provide all relief necessary to make the employee whole, including reinstatement of the complainant to that person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

Subpart C Miscellaneous Provisions

§ 1980.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30 day objection period described in ' 1980.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30 day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) Investigative settlements. At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to '1980.113.

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under ' 1980.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1980.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1980.114 District Court jurisdiction of discrimination complaints.

(a) If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in federal court, a complainant must file with the administrative law judge or the Board, depending upon where the proceeding is pending, a notice of his or her intention to file such a complaint. The notice must be served upon all parties to the proceeding. If the Assistant Secretary is not a party, a copy of the notice must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor,

Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

§ 1980.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

**Standards of Professional Conduct for Attorneys*
Securities and Exchange Commission
17 C.F.R. Part 205**

§ 205.1 Purpose and scope.

This part sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of an issuer. These standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney not inconsistent with the application of this part. Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) Appearing and practicing before the Commission:

(1) Means:**(i)** Transacting any business with the Commission, including communications in any form;**(ii)** Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;**(iii)** Providing advice in respect of the United States securities laws or the Commission's rules or regulations there under regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or **(iv)** Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations there under to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

(2) Does not include an attorney who:**(i)** Conducts the activities in paragraphs **(a)(1)(i)** through **(a)(1)(iv)** of this section other than in the context of providing legal services to an issuer with whom the attorney has an attorney-client relationship; or **(ii)** Is a non-appearing foreign attorney.

(b) Appropriate response means a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:

(1) That no material violation, as defined in paragraph **(i)** of this section, has occurred, is ongoing, or is about to occur;

(2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or

(3) That the issuer, with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to ' 205.3(b)(3), or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:**(i)** Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or **(ii)** Has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation.

(c) Attorney means any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) Breach of fiduciary duty refers to any breach of fiduciary or similar duty to the issuer recognized under an applicable Federal or State statute or at common law, including but not limited to misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) Evidence of a material violation means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.

(f) Foreign government issuer means a foreign issuer as defined in 17 CFR 230.405 eligible to register securities on Schedule B of the Securities Act of 1933 (15 U.S.C. 77a et seq., Schedule B).

(g) In the representation of an issuer means providing legal services as an attorney for an issuer, regardless of whether the attorney is employed or retained by the issuer.

(h) Issuer means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn, but does not include a foreign government issuer. For purposes of paragraphs (a) and (g) of this section, the term "issuer" includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.**(i)** Material violation means a material violation of an applicable United States federal or state

securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law. **(j)** Non-appearing foreign attorney means an attorney:

(1) Who is admitted to practice law in a jurisdiction outside the United States;

(2) Who does not hold himself or herself out as practicing, and does not give legal advice regarding, United States federal or state securities or other laws (except as provided in paragraph **(j)(3)(ii)** of this section); and

(3) Who: **(i)** Conducts activities that would constitute appearing and practicing before the Commission only incidentally to, and in the ordinary course of, the practice of law in a jurisdiction outside the United States; or **(ii)** Is appearing and practicing before the Commission only in consultation with counsel, other than a non-appearing foreign attorney, admitted or licensed to practice in a state or other United States jurisdiction.

(k) Qualified legal compliance committee means a committee of an issuer (which also may be an audit or other committee of the issuer) that:

(1) Consists of at least one member of the issuer's audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)); **(2)** Has adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under ' 205.3;

(3) Has been duly established by the issuer's board of directors, with the authority and responsibility: **(i)** To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in ' 205.3(b)(4)); **(ii)** To determine whether an investigation is necessary regarding any report of evidence of a material violation by the issuer, its officers, directors, employees or agents and, if it determines an investigation is necessary or appropriate, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and **(iii)** At the conclusion of any such investigation, to:

(A) Recommend, by majority vote, that the issuer implement an appropriate response to evidence of a material violation; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under this section and the appropriate remedial measures to be adopted; and

(4) Has the authority and responsibility, acting by majority vote, to take all other appropriate action, including the authority to notify the Commission in the event that the issuer fails in any material respect to

implement an appropriate response that the qualified legal compliance committee has recommended the issuer to take.

(l) Reasonable or reasonably denotes, with respect to the actions of an attorney, conduct that would not be unreasonable for a prudent and competent attorney.

(m) Reasonably believes means that an attorney believes the matter in question and that the circumstances are such that the belief is not unreasonable.

(n) Report means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§ 205.3 Issuer as client.

(a) Representing an issuer. An attorney appearing and practicing before the Commission in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) Duty to report evidence of a material violation.

(1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or the equivalents thereof) forthwith. By communicating such information to the issuer's officers or directors, an attorney does not reveal client confidences or secrets or privileged or otherwise protected information related to the attorney's representation of an issuer.

(2) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is appropriate to determine whether the material violation described in the report has occurred, is ongoing, or is about to occur. If the chief legal officer (or the equivalent thereof) determines no material violation has occurred, is ongoing, or is about to occur, he or she shall notify the reporting attorney and advise the reporting attorney of the basis for such determination. Unless the chief legal officer (or the equivalent thereof) reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she shall take all reasonable steps to cause the issuer to adopt an appropriate response, and shall advise the reporting attorney thereof. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section if the issuer has duly established a qualified legal compliance committee prior to the report of evidence of a material violation.

(3) Unless an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has provided an appropriate response within a reasonable time, the attorney shall report the evidence of a material violation to:**(i)** The audit committee of the

issuer's board of directors; **(ii)** Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) (if the issuer's board of directors has no audit committee); or **(iii)** The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19))).⁽⁴⁾ If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report such evidence as provided under paragraph (b)(3) of this section.⁽⁵⁾ An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(3), or (b)(4) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve an officer or director of the issuer to whom such evidence has been reported under paragraph (b)(1), (b)(3), or (b)(4) of this section from a duty to respond to the reporting attorney.

(6) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if: **(i)** The attorney was retained or directed by the issuer's chief legal officer (or the equivalent thereof) to investigate such evidence of a material violation and:

(A) The attorney reports the results of such investigation to the chief legal officer (or the equivalent thereof); and

(B) Except where the attorney and the chief legal officer (or the equivalent thereof) each reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the chief legal officer (or the equivalent thereof) reports the results of the investigation to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee; or **(ii)** The attorney was retained or directed by the chief legal officer (or the equivalent thereof) to assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation, and the chief legal officer (or the equivalent thereof) provides reasonable and timely reports on the progress and outcome of such proceeding to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee.

(7) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if such attorney was retained or directed by a qualified legal compliance committee: **(i)** To investigate such evidence of a material violation; or **(ii)** To assert, consistent with his or her professional obligations, a colorable defense on behalf of the