

112TH CONGRESS  
1ST SESSION

# H. R. 2483

To amend the Securities Exchange Act of 1934 and the Commodity Exchange Act to modify certain provisions relating to whistleblower incentives and protection.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2011

Mr. GRIMM (for himself, Mr. GARRETT, Mr. STIVERS, and Mr. CAMPBELL) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Securities Exchange Act of 1934 and the Commodity Exchange Act to modify certain provisions relating to whistleblower incentives and protection.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Whistleblower Im-  
5 provement Act of 2011”.

1 **SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**  
2 **OF 1934.**

3 (a) EXCLUSION OF CERTAIN COMPLIANCE OFFICERS  
4 AND INTERNAL REPORTING AS A CONDITION OF  
5 AWARD.—Section 21F of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78u–6) is amended—

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

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

18 “(A) first report the information described  
19 in paragraph (1) to his or her employer before  
20 reporting such information to the Commission;  
21 and

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

25 (2) in subsection (c)(2)—

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

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

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

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

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

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

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

17 (b) ELIMINATION OF MINIMUM AWARD REQUIRE-  
18 MENT.—Subsection (b)(1) of such section is amended—

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

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

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

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

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

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

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

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

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

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

8                   “(A) NOTIFICATION OF INVESTIGATION.—

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

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

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

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

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

1 **SEC. 3. AMENDMENTS TO THE COMMODITY EXCHANGE**  
2 **ACT.**

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

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

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

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

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

25 (2) in subsection (c)(2)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8                   “(A) NOTIFICATION TO EMPLOYER.—

9                           “(i) NOTIFICATION REQUIRED.—Prior  
10                           to commencing any enforcement action re-  
11                           lating in whole or in part to any informa-  
12                           tion reported to it by a whistleblower, the  
13                           Commission shall promptly notify any enti-  
14                           ty that is to be subject to such enforce-  
15                           ment of information received by the Com-  
16                           mission from a whistleblower who is an  
17                           employee of such entity to enable the enti-  
18                           ty to investigate the alleged misconduct  
19                           and take remedial action, unless the Com-  
20                           mission determines in the course of a pre-  
21                           liminary investigation not exceeding 30  
22                           days of the alleged misconduct, that such  
23                           notification would jeopardize necessary in-  
24                           vestigative measures and impede the gath-  
25                           ering of relevant facts, based on—

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

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

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

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

20 **SEC. 4. STUDY.**

21                  The Comptroller General shall conduct a study to de-  
22                  termine what impact, if any, the whistleblower incentives  
23                  program established under section 21F of the Securities  
24                  Exchange Act of 1934 (15 U.S.C. 78u–6) and section 23  
25                  of the Commodity Exchange Act (7 U.S.C. 26) has had

1 on shareholder value. The Comptroller General shall  
2 transmit to Congress a report on the study not later than  
3 18 months after the date of enactment of this Act.

○