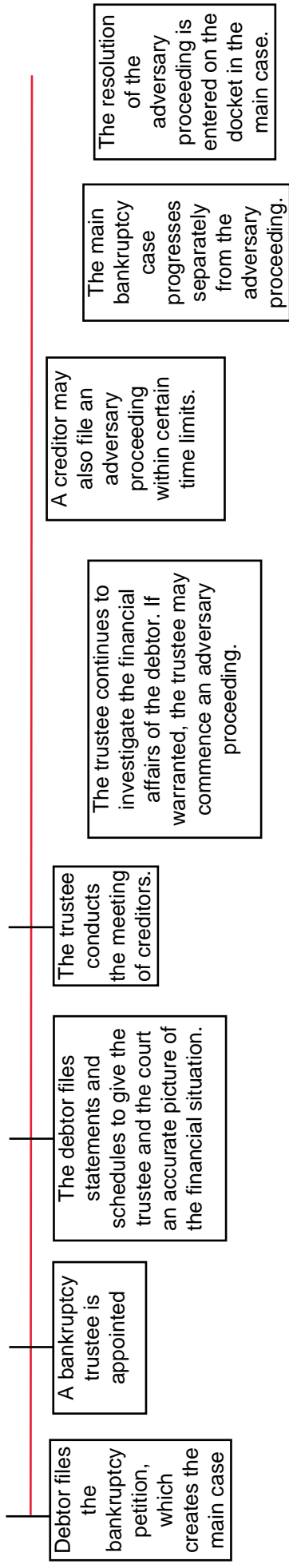
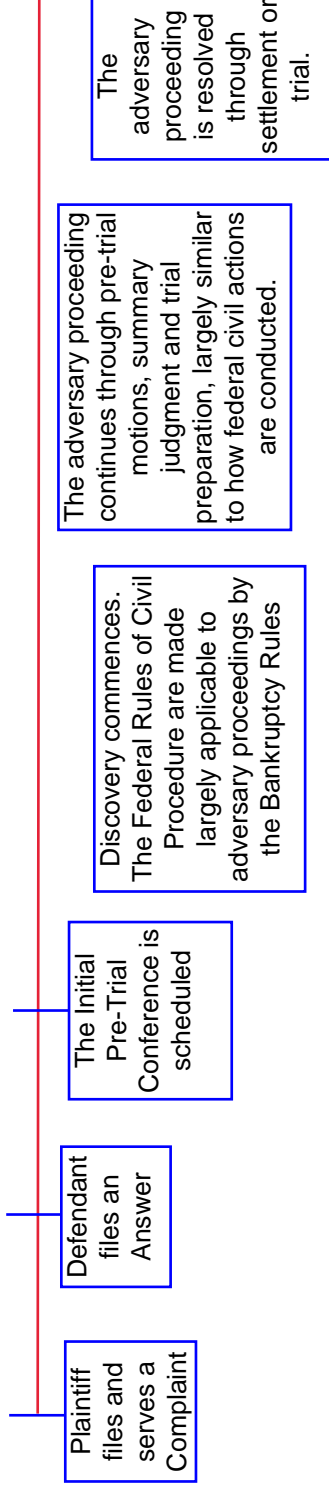


# The Adversary Proceeding in Bankruptcy

Main Bankruptcy Case (an adversary proceeding is filed while the main case is pending)



The Life of an Adversary Proceeding (concurrent with main case)



A few tips for working with the Bankruptcy Court:

Once an adversary proceeding is filed, Bankruptcy Rule 7001 et seq. (which correspond to the FRCP) govern the procedures for service, discovery, pre-trial matters, witnesses and evidence, summary judgment, and trial. Local Rules 7003-1 through 7069-1 are also applicable to adversary proceedings.

Use the forms specific to bankruptcy, found in the Forms and Local Rules link at [www.utb.uscourts.gov](http://www.utb.uscourts.gov).

Contact the scheduling clerk for a hearing date. No action will be taken on a motion until it is set for hearing or a pending order is filed.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

**GUIDELINES FOR APPEAL PROCEDURES  
THE UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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Pursuant to Local Rules of the United States Bankruptcy Appellate Panel of the Tenth Circuit, the following guidelines should be used to facilitate the processing of an appeal. Further information can be obtained from the Bankruptcy Appellate Panel website at [www.bap10.uscourts.gov](http://www.bap10.uscourts.gov). The forms mentioned below are accessible on the Bankruptcy Court's website [www.utb.uscourts.gov](http://www.utb.uscourts.gov).

1. Pursuant to U.S.C. § 158(c)(1), all appeals from Bankruptcy Courts in the Tenth Circuit are heard by the United States Bankruptcy Appellate Panel of the Tenth Circuit, unless the appellant at the time of filing the Notice of Appeal and Statement of Election elects to have the appeal heard by United States District Court District of Utah (District Court), OR any other party elects not later than 30 days after service of the Notice of Appeal and Statement of Election to have such appeal heard by the District Court. Other parties who elect to have the appeal heard by the District Court must file an Optional Appellee Statement of Election to Proceed in District Court with the Bankruptcy Appellate Panel.
2. Within 14 days after the filing of the Notice of Appeal and Statement of Election, the Appellant shall file a Designation of Record and Statement of Issues on Appeal with the Bankruptcy Court and serve a copy on the Appellee. The Appellee has 14 days after the service of Appellant's Designation of Record and Statement of Issues to file his/her own Designation of Record and Statement of Issues with the Bankruptcy Court and serve a copy on the Appellant. Pursuant to 10th Cir. BAP L.R. 8009-1, the designated items of the record on appeal for purposes of Fed. R. Bankr. P. 8009(a)(4) must be presented to the Bankruptcy Appellate Panel by the parties in the appendices as required by Fed. R. Bankr. P. 8018(b) and the 10th Cir. BAP L.R. 8018-1. Parties should not provide copies of the designated items to the bankruptcy court.
3. Timely Requests for Transcripts are necessary to ensure adequate time to reproduce the records. Any party must order the parts of the transcript that will be needed on appeal pursuant to Fed. R. Bankr. P. 8009(b). The Court will not bear the cost of requested transcripts. Please file the transcript order form with the Clerk of the Bankruptcy Court as proof of a timely request.
4. The Bankruptcy Court's Appeals Clerk, as required by 10th Cir. BAP L.R. 8010-1(a), has already transmitted copies of the Notice of Appeal and Statement of Election and other pertinent pleadings to the Clerk of the Bankruptcy Appellate Panel. A Bankruptcy Appellate Panel case number will be assigned, and further instructions to assist you will be forwarded, by the Bankruptcy Appellate Panel Clerk's office.
5. The Bankruptcy Court case docket may be obtained through PACER (<https://www.pacer.gov/>) or by contacting the Bankruptcy Court Clerk's office at 801-524-6687.
6. Contact information for the Bankruptcy Appellate Panel of the Tenth Circuit

U.S. Bankruptcy Appellate Panel of the Tenth Circuit  
Office of the Clerk, Byron White U.S. Courthouse  
1823 Stout Street, Denver, CO 80257  
Tel: 303-335-2900, Fax: 303-335-2999

David A. Sime  
Clerk of Court

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

**GUIDELINES FOR APPEAL PROCEDURES TO  
UNITED STATES DISTRICT COURT**

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Pursuant to Fed. R. Bankr. P. 8001 through 8028, the following guidelines should be used to facilitate the processing of the recently filed appeal. The forms mentioned below are accessible on the Bankruptcy Court's website [www.utb.uscourts.gov](http://www.utb.uscourts.gov).

1. The Bankruptcy Court's Appeals Clerk, as required by DUCivR 83-7.9, has already transmitted copies of the Notice of Appeal and Statement of Election and other pertinent pleadings to the U.S. District Court Clerk's office. A District Court case number will be assigned. Within 14 days after the filing of the Notice of Appeal, the appellant shall file a Designation of Record and Statement of Issues on Appeal with the Bankruptcy Court and serve a copy on the Appellee. The Appellee has 14 days after the service of Appellant's Designation of Record and Statement of Issues to file his/her own Designation of Record and Statement of Issues with the Bankruptcy Court and serve a copy on the Appellant. All further documents shall be filed with the United States District Court for the District of Utah. Instructions to assist you will be forwarded by the District Court Clerk's office.
2. Timely Requests for Transcripts are necessary to ensure adequate time to reproduce the records. Any party must order the parts of the transcript that will be needed on appeal. The Court will not bear the cost of requested transcripts. Please file the transcript order form with the Clerk of the Bankruptcy Court and the U.S. District Court Clerk's office as proof of a timely request.
3. If the case is remanded to the Bankruptcy Court, counsel should obtain time on the Court's calendar for whatever proceedings are required. For further information see Fed. R. Bankr. P. 8001-8028.
4. As mentioned previously, forms may be obtained or referenced on the Bankruptcy Court website. In addition, copies of the docket may be obtained through PACER ([www.pacer.gov](http://www.pacer.gov)) or by contacting the Bankruptcy Court Clerk's office at 801-524-6687.

David A. Sime

Clerk of Court

**SUING THE UNITED STATES, ITS AGENCIES, AND EMPLOYEES AND KEEPING  
THEM IN COURT**

**Jared C. Bennett  
First Assistant United States Attorney  
United States Attorney's Office District of Utah**

**I. SERVING THE UNITED STATES, ITS AGENCIES, AND EMPLOYEES**

A. [Fed. R. Civ. P. 4\(i\)](#) governs service of process upon the United States, its agencies, and employees

B. Rule 4(i) is not subject to the waiver of service provisions. [Fed. R. Civ. P. 4\(d\)](#) (stating that only parties served under Rule 4(e), (f), or (h) are subject to waiver of service provisions)

C. Service on the United States:

1. Summons and complaint delivered “to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk”

OR

2. Registered or certified mail to the civil process clerk at the United States Attorney's Office. [Fed. R. Civ. P. 4\(i\)\(1\)\(A\)](#).

a. Civil Process Clerk for the District of Utah is Valerie Maxwell.

AND

3. Registered or certified mail to the Attorney General of the United States.

4. Service upon the United States Attorney is the start date for when the clock starts for the United States' responsive pleading or motion. [Fed. R. Civ. P. 12\(a\)\(2\)](#), (3).

D. If a federal agency or employee is being sued in an official capacity, you must:

1. Serve the United States (as explained above)

AND

2. Serve the federal agency or employee with the summons and complaint by registered or certified mail.

E. If a federal employee is being sued in his/her personal capacity, you must:

1. Serve the United States (as explained above)

AND

2. Serve the individual employee under [Fed. R. Civ. P. 4\(e\)](#), (f), or (g).

## II. FEDERAL JURISDICTION GENERALLY

A. Unlike state courts, federal courts are of limited jurisdiction. [Kokkonen v. Guardian Life Ins. Co. of Am.](#), 511 U.S. 375, 377 (1994).

B. Federal court jurisdiction is so limited that courts “presume[] that a cause lies outside of this limited jurisdiction . . . .” *Id.*

C. The burden of establishing the federal court’s jurisdiction over a matter “rests upon the party asserting jurisdiction.” *Id.*

D. Against most parties, this jurisdictional burden can be resolved by establishing a federal question (28 U.S.C. § 1331) or diversity jurisdiction (28 U.S.C. § 1332) along with any supplemental jurisdiction (28 U.S.C. § 1367).

E. To have jurisdiction over the United States, however, mere federal question is not enough. The plaintiff must be able to show that the United States has waived its sovereign immunity. *See, e.g., Eagle-Picher Indus., Inc. v. United States*, 901 F.2d 1530, 1532 (10th Cir. 1990) (“[J]urisdiction over a suit against the United States cannot be based upon 28 U.S.C. § 1331, because that statute does not waive the government’s sovereign immunity[.]”).

## III. SOVEREIGN IMMUNITY

A. As a general rule, “the United States, as sovereign, is immune from suit save as it consents to be sued.” [United States v. Mitchell](#), 445 U.S. 535, 538 (1980) (quoting [United States v. Sherwood](#), 312 U.S. 584, 586 (1941)).

B. The United States’ consent to be sued is “a prerequisite for jurisdiction.” [United States v. Mitchell](#), 445 U.S. 535, 538 (1980).

C. In order for the United States to waive this sovereign immunity, the waiver “cannot be implied but must be unequivocally expressed.” *Id.* (quoting [United States v. King](#), 395 U.S. 1, 4 (1969)).

D. The plaintiff bears the burden of establishing that the United States waived its sovereign immunity. [Mitchell](#), 445 U.S. at 538.

## IV. COMMON WAIVERS OF SOVEREIGN IMMUNITY

A. Federal Tort Claims Act (“FTCA”)—28 U.S.C. §§ 1346(b)(1), 2401(b), 2671-80.

1. “The FTCA constitutes a limited waiver of the Government’s sovereign immunity.” [Cannon v. United States](#), 338 F.3d 1183, 1188 n.10 (10th Cir. 2003).

2. FTCA grants “exclusive jurisdiction” to federal courts over:

- a. “injury or loss of property, or personal injury or death caused by

b. the negligent or wrongful act or omission of any employee of the Government

c. while acting within the scope of his office or employment,

d. under circumstances where the United States, if a private person, would be liable to the claimant according to the law of the place where the act of omission occurred.” 28 U.S.C. §§ 1346(b)(1); 2674.

3. Because the FTCA’s waiver of sovereign immunity gives federal courts “exclusive jurisdiction,” a tort case filed against the United States in state court will be dismissed even if removed to federal court because of doctrine of derivative jurisdiction. *Lopez v. Sentrillon Corp.*, 749 F.3d 347, 350 (5th Cir. 2014) (dismissing FTCA claims against United States that were removed from federal court because under derivative jurisdiction doctrine, federal court acquires jurisdiction to same extent as state court had prior to removal. Because state court had no jurisdiction over the United States, federal court did not either).

4. Congress established certain conditions on the FTCA’s waiver of sovereign immunity:

a. Plaintiff must present tort claim to agency in writing within 2 years of claim’s accrual. 28 U.S.C. § 2401(b).

--The SF-95 is the form to file with the agency to which you are presenting your client’s tort claim.

--Failure to timely present claim to agency means that it is “forever barred,” 28 U.S.C. § 2401(b), although equitable tolling may apply in limited cases. *United States v. Kwai Fun Wong*, 135 S.Ct. 1625, 1632-33 (2015).

b. To meet the FTCA’s presentation requirements for purposes of sovereign immunity, a claim to the agency must contain “(1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and (2) a sum certain damages claim.” *Bradley v. United States ex rel. Veterans Admin.*, 951 F.2d 268, 270 (10th Cir. 1991) (citation omitted).

c. If the agency denies a claim, the plaintiff has 6 months from the denial to file an action federal district court. 28 U.S.C. § 2401(b). This is also subject to equitable tolling. *Kwai Fun Wong*, 135 S.Ct. at 1633.

d. Plaintiff is limited to damages stated in administrative claim absent exceptional circumstances. 28 U.S.C. § 2675(b).

--Punitive damages not available. 28 U.S.C. § 2674.

--Pre-judgment interest not available. 28 U.S.C. § 2674.

5. Bench trial only in FTCA cases. 28 U.S.C. § 2402.

6. Under [28 U.S.C. § 2680\(h\)](#), the FTCA does NOT waive sovereign immunity for:

a. Claims based on government employee's execution of a "discretionary function." [28 U.S.C. § 2680\(a\)](#). For example,

--Firefighting activities

--Deciding not to have parking lot lighting in a National Park

b. Claim arising out of the loss, miscarriage, or negligent transmission of the mail. [28 U.S.C. § 2680\(b\)](#).

c. Claims arising over seizure of goods. [28 U.S.C. § 2680\(c\)](#).

d. Claims "arising out of" assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. [28 U.S.C. § 2680\(h\)](#).

--However, sovereign immunity is waived for claims of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution where actions of law enforcement officer involved. [28 U.S.C. § 2680\(h\)](#).

#### B. TAKINGS CLAIMS & CONTRACT CLAIMS

1. Tucker Act provides waiver of sovereign immunity for takings claims and contract claims. [28 U.S.C. § 1491](#).

2. However, Tucker Act's waiver of sovereign immunity requires takings and contract claims over \$10,000.00 to be filed in the Federal Court of Claims not federal district court. *E. Enter. v. Apfel*, 524 U.S. 498, 520 (1998).

3. Caveat: There are times when Congress has withdrawn the requirement to file with the Federal Court of Claims for certain types of takings.

#### C. QUIET TITLE

1. [28 U.S.C. § 2409a](#): Waives sovereign immunity to file a quiet title action against the United States in which the United States claims an ownership interest.

a. It provides the federal district courts with "exclusive jurisdiction" over quiet title claims against the United States. [28 U.S.C. § 1346\(f\)](#).

--Derivative jurisdiction applies if case filed in state court first.

b. Waiver of sovereign immunity precludes disturbing the United States in its possession of the land and preliminarily enjoining the United States as part of a quiet title action. [28 U.S.C. § 2409a\(b\)](#), (c).

c. Complaint must state "with particularity" the "nature of the right, title, or interest in which the plaintiff claims in the real property, the circumstances under which



it was acquired, and the right, title, or interest claimed by the United States.” 28 U.S.C. § 2409a(d).

d. No jury trial. [28 U.S.C. § 2409a\(f\)](#).

2. [28 U.S.C. § 2410](#): Waiver of sovereign immunity that allows plaintiff to bring United States into either federal or STATE COURT to quiet title to, foreclose a mortgage or lien, to partition, to condemn, or of interpleader on real or personal property “on which the United States has or claims a mortgage or other lien.” [28 U.S.C. § 2410\(a\)](#). The United States can still remove to federal court under [28 U.S.C. § 1442](#).

a. This waiver of sovereign immunity requires pleading with particularity. [28 U.S.C. § 2410\(b\)](#).

b. Rules regarding service on the United States and its response time are set out and preempt state law to the contrary. [28 U.S.C. § 2410\(b\)](#).

#### D. INJUNCTIVE & DECLARATORY RELIEF

1. [5 U.S.C. § 702](#): Waives sovereign immunity to:

a. Seek judicial review of many executive agency final agency actions that do not already have a procedure for challenging them in a specific laws; and

b. Seek injunctive or declaratory relief, “other than money damages” for a claim that an agency or an officer/employee thereof acted or failed to act in an official capacity or under color of legal authority.

#### V. ETHICAL CONSIDERATIONS IN SUING THE UNITED STATES

A. Utah R. Prof. Conduct 4.2(a): In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule.

B. How does this apply to government agencies that your client is suing?

1. [Utah St. Bar Eth. Op. No. 115R, 1994 WL 579853 \(approved July 29, 1994\)](#) (opining that a lawyer representing a government office or department may not prevent lawyer representing private party from contacting any employee of the government office or department outside presence of government attorney, whether or not the communication involves a matter in litigation. However, if counsel for a private party contacts an employee of a government agency about pending litigation against the agency involving the private party, counsel must inform the government employee (a) about the pending litigation or that the matter has been referred to agency counsel and (b) about his representation of a private party in that litigation.)



2. When an Assistant United States Attorney (“AUSA”) is defending the United States, the AUSA represents the United States not the government employee UNLESS the government employee is being sued in his/her personal capacity. Consequently, contacting a represented government employee about a personal capacity matter against him/her in litigation will implicate Rule 4.2 as it would for any other individual.

## Press Release

# SEC Announces Its Largest-Ever Whistleblower Awards

### FOR IMMEDIATE RELEASE

2018-44

*Washington D.C., March 19, 2018* — The Securities and Exchange Commission today announced its highest-ever Dodd-Frank whistleblower awards, with two whistleblowers sharing a nearly \$50 million award and a third whistleblower receiving more than \$33 million. The previous high was a \$30 million award in 2014.

"These awards demonstrate that whistleblowers can provide the SEC with incredibly significant information that enables us to pursue and remedy serious violations that might otherwise go unnoticed," said Jane Norberg, Chief of the SEC's Office of the Whistleblower. "We hope that these awards encourage others with specific, high-quality information regarding securities laws violations to step forward and report it to the SEC."

The SEC has awarded more than \$262 million to 53 whistleblowers since issuing its first award in 2012. All payments are made out of an investor protection fund established by Congress that is financed entirely through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards.

Whistleblowers may be eligible for an award when they voluntarily provide the SEC with original, timely, and credible information that leads to a successful enforcement action.

Whistleblower awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed \$1 million. As with this case, whistleblowers can report jointly under the program and share an award.

By law, the SEC protects the confidentiality of whistleblowers and does not disclose information that might directly or indirectly reveal a whistleblower's identity.

For more information about the whistleblower program and how to report a tip, visit [www.sec.gov/whistleblower](http://www.sec.gov/whistleblower).

###

## Related Materials

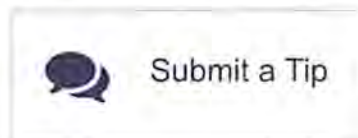
- [SEC Order](#)
- [SEC Whistleblower Program Info & Statistics](#)

## Office of the Whistleblower

### Submit a Tip

To qualify for an award under the Whistleblower Program, you must submit information regarding possible securities law violations to the Commission in one of the following two ways:

(1) By submitting a tip electronically through the SEC's Tips, Complaints and Referrals Portal by clicking the button below.



**\*\*The TCR complaint form is compatible for use with Microsoft Internet Explorer (IE) version 11, Safari, Mozilla Firefox and Google Chrome (please note that use of the Chrome browser may result in some visual format issues including the display of instructional pop up boxes). \*\***

(2) By mailing or faxing a [Form TCR](#) to:

**SEC Office of the Whistleblower**

100 F Street NE

Mail Stop 5631

Washington, DC 20549

Fax: (703) 813-9322

*If you are submitting additional information relating to a previously submitted tip, please reference your original TCR submission number.*

### Important Notes

If you submit your information online through the SEC's Tips, Complaints and Referrals Portal, and would like to (1) be eligible to apply for a whistleblower award and/or (2) receive additional confidentiality protections (even if you do not wish to be considered for an award), you must answer "yes" to the question "Are you filing this tip under the SEC's whistleblower program?" on the "About You" page of the online questionnaire. You must also complete the whistleblower declaration at the end of the questionnaire.

The SEC treats all tips, complaints and referrals as confidential and nonpublic, and does not disclose such information to third parties, except in limited circumstances authorized by statute, rule, or other provisions of law. As a matter of practice, the whistleblower program provides additional confidentiality protections, consistent with the limitations on disclosure of information that could reasonably be expected to reveal the identity of a whistleblower set forth in Section 21F(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u-6(h)(2)] and Rule 21F-7 of the SEC's Whistleblower Rules [17 C.F.R. § 240.21F-7]. You should answer "yes" to the whistleblower program question if you wish to avail yourself of these additional confidentiality protections, even if you are not interested in being eligible for a whistleblower award.

Please note that if you choose to submit your information anonymously, i.e., without providing your identity or contact information, you must be represented by, and provide contact information for, an attorney in connection with your

submission in order to be eligible for an award.

## Contact Us

100 F Street NE  
Mail Stop 5631  
Washington, DC 20549  
Phone: (202) 551-4790  
Fax: (703) 813-9322

*Modified: April 12, 2018*



## Office of the Whistleblower

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### Frequently Asked Questions

The answers to these frequently asked questions represent the views of the staff of the Office of the Whistleblower. They are not rules, regulations or statements of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved them. These FAQs provide short general summaries of certain key features of the SEC Whistleblower Program and do not purport to be a complete or comprehensive discussion of all of its provisions. For detailed information about the program, including eligibility requirements and certain limitations that apply, please see [Section 922](#) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the [Final Rules](#) implementing the program.

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1. [What is the SEC Whistleblower Program?](#)
  2. [Who is an eligible whistleblower?](#)
  3. [What information can I submit to the SEC?](#)
  4. [What does it mean to "voluntarily" provide information?](#)
  5. [What is "original information?"](#)
  6. [How might my information "lead to" a successful SEC action?](#)
  7. [I work at a company with an internal compliance process. Can I report internally and still be eligible for a whistleblower award?](#)
  8. [I provided information to the SEC before the enactment of Dodd-Frank on July 21, 2010. Am I eligible for an award?](#)
  9. [How do I submit information under the SEC whistleblower program?](#)
  10. [Can I submit my information anonymously?](#)
  11. [Will the SEC keep my identity confidential?](#)
  12. [What happens to my tip once it's received by the SEC?](#)
  13. [How will I learn about the opportunity to apply for an award?](#)
  14. [How do I apply for an award?](#)
  15. [How can I apply for an award in connection with a related action?](#)
  16. [What factors does the SEC consider in determining the amount of the award?](#)
  17. [Can I appeal the SEC's award decision?](#)
  18. [What rights do I have if my employer retaliates against me for reporting a possible securities violation?](#)
  19. [If I have more questions who can I call?](#)
- 

#### 1. What is the SEC Whistleblower Program?

The Whistleblower Program was created by Congress to provide monetary incentives for individuals to come forward and report possible violations of the federal securities laws to the SEC. Under the program eligible whistleblowers (defined

below) are entitled to an award of between 10% and 30% of the monetary sanctions collected in actions brought by the SEC and related actions brought by certain other regulatory and law enforcement authorities.

The Program also prohibits retaliation by employers against employees who provide us with information about possible securities violations.

## 2. Who is an eligible whistleblower?

An "eligible whistleblower" is a person who voluntarily provides the SEC with original information about a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur. The information provided must lead to a successful SEC action resulting in an order of monetary sanctions exceeding \$1 million. One or more people are allowed to act as a whistleblower, but companies or organizations cannot qualify as whistleblowers. You are not required to be an employee of the company to submit information about that company. See [Rule 21F-2](#). In addition, to be eligible for an award, the information must be provided in the form and manner required under the whistleblower rules. See [Rule 21F-9](#) and [FAQ 9](#).

## 3. What information can I submit to the SEC?

The SEC conducts investigations into possible violations of the federal securities laws. In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to investigative staff for further follow-up or investigation. For instance, if the tip identifies individuals involved in the scheme, provides examples of particular fraudulent transactions, or points to non-public materials evidencing the fraud, the tip is more likely to be assigned to Enforcement staff for investigation.

The SEC does not have jurisdiction to take action on information that is outside the scope or coverage of the federal securities laws. We may, in appropriate circumstances, refer your matter to another regulatory or law enforcement agency.

If you would like to provide the SEC with information about fraud or wrongdoing involving potential violations of the federal securities laws please follow the instructions provided in [Rule 21F-9](#) and [FAQ 9](#). Some examples of the kind of conduct the SEC is interested in include:

- Ponzi scheme, Pyramid Scheme, or a High-Yield Investment Program
- Theft or misappropriation of funds or securities
- Manipulation of a security's price or volume
- Insider trading
- Fraudulent or unregistered securities offering
- False or misleading statements about a company (including false or misleading SEC reports or financial statements)
- Abusive naked short selling
- Bribery of, or improper payments to, foreign officials
- Fraudulent conduct associated with municipal securities transactions or public pension plans
- Other fraudulent conduct involving securities

## 4. What does it mean to "voluntarily" provide information?



Your information is provided "voluntarily" if you provide it to us or another regulatory or law enforcement authority before (i) we request it from you or your lawyer or (ii) Congress, another regulatory or enforcement agency or self-regulatory organization (such as FINRA) asks you to provide the information in connection with an investigation or certain examinations or inspections. See [Rule 21F-4\(a\)](#).

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## 5. What is "original information?"

"Original information" is information derived from your independent knowledge (facts known to you that are not derived from publicly available sources) or independent analysis (evaluation of information that may be publicly available but which reveals information that is not generally known) that is not already known by us. So if we received your information previously from another person, that information will not be original information unless you were the original source of the information that the other person submitted. See [Rule 21F-4\(b\)\(1\)](#).

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## 6. How might my information "lead to" a successful SEC action?

Your information satisfies the "led to" criterion if your information causes us to open a new investigation, re-open a previously closed investigation or pursue a new line of inquiry in connection with an ongoing investigation, and we bring a successful enforcement action based at least in part on the information you provided. Additionally, you may still be eligible if your information relates to an ongoing examination or investigation, if the information you provide significantly contributes to the success of our resulting enforcement action. You may also be eligible if you report your information internally first to your company, and the company later reports your information to us, or reports the results of an internal investigation that was prompted by your information, as long as you also report directly to us within 120 days. See [Rule 21F-4\(c\)](#).

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## 7. I work at a company with an internal compliance process. Can I report internally and still be eligible for a whistleblower award?

You may report internally at your company, but internal reporting is not required to be considered for an award. If you choose to report internally, but also report the information to us within 120 days of reporting it internally, then (i) we will consider your information to be reported to the SEC on the date you reported it internally, and (ii) if the company conducts an investigation based on your internal report and then reports the results to us, you will benefit from all the information the Company's investigation uncovers. Also your participation in your internal compliance program will be a positive factor when we are considering an award percentage. Please visit the [retaliation section](#) for more information regarding your retaliation protections when reporting internally. See [Rules 21F-4\(b\)\(7\)](#) and [21F-4\(c\)](#).

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## 8. I provided information to the SEC before the enactment of Dodd-Frank on July 21, 2010. Am I eligible for an award?

Awards are available only in connection with information submitted to the SEC after July 21, 2010. See [Rule 21F-4\(b\)\(1\)](#).

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## 9. How do I submit information under the SEC whistleblower program?

In order to be considered for an award under the whistleblower program, you must submit your information either through our online Tips, Complaints and Referrals questionnaire and answer "yes" to the questions regarding participating in the whistleblower program or by completing our hardcopy Form-TCR and mailing or faxing it to the SEC Office of the Whistleblower, 100 F Street NE, Mail Stop 5631, Washington, DC 20549, Fax (703) 813-9322. In addition, you must personally execute the declarations under penalty of perjury on these forms in the sections provided. See [Rule 21F-9](#).



Whistleblowers who use the online portal to submit a complaint receive a computer-generated confirmation of receipt with a TCR submission number. For those who submit a hard-copy Form TCR by mail or fax, the Office of the Whistleblower ("OWB") sends an acknowledgement letter, which includes a TCR submission number.

After submitting an initial tip, a whistleblower is free to submit additional information or materials. Unless otherwise instructed, additional information may be sent to OWB in hard-copy by mail or fax and should include the original TCR submission number. OWB will acknowledge receipt of additional information or materials by letter.

## 10. Can I submit my information anonymously?

Yes, you may submit anonymously. To be eligible for an award you must have an attorney represent you in connection with your submission. Your attorney must submit your information on your behalf either through our online Tips, Complaints and Referrals questionnaire, or by submitting hard copy Form TCR, in either case completing the required attorney certification. In addition, you must provide the attorney with a completed hard copy Form TCR signed under penalty of perjury at the time of your anonymous submission. See [Rule 21F-9](#).

## 11. Will the SEC keep my identity confidential?

Whether or not you seek anonymity, the SEC is committed to protecting your identity to the fullest extent possible. For example, we will not disclose your identity in response to requests under the Freedom of Information Act. However, there are limits on our ability to shield your identity and in certain circumstances we must disclose it to outside persons or entities. For example, in an administrative or court proceeding, we may be required to produce documents or other information which would reveal your identity. In addition, as part of our ongoing investigatory responsibilities, we may use information you have provided during the course of our investigation. In appropriate circumstances, we may also provide information, subject to confidentiality requirements, to other governmental or regulatory entities. See [Rule 21F-7](#).

## 12. What happens to my tip once it's received by the SEC?

All tips, complaints and referrals received by the SEC are fully reviewed by our Enforcement staff. During the evaluation process, the Office of Market Intelligence ("OMI") staff examines each tip to identify those with high-quality information that warrant the additional allocation of SEC resources. When OMI determines a complaint warrants deeper investigation, OMI staff assigns the complaint to one of the SEC's eleven regional offices, a specialty unit, or to an Enforcement group in the Home Office. Complaints that relate to an existing investigation are forwarded to the staff working on the matter. Tips that could benefit from the specific expertise of another Division or Office within the SEC generally are forwarded to staff in that Division or Office for further analysis.

The SEC may use information from whistleblower tips and complaints in several different ways. For example, the SEC may initiate an enforcement investigation based on the whistleblower's tip. A whistleblower tip may also prompt the SEC to commence an examination of a regulated entity or a review of securities filings, which may lead to an enforcement action. Even if the tip does not cause an investigation to be opened, it may still help lead to a successful enforcement action if the whistleblower provides additional information that significantly contributes to an ongoing or active investigation.

The SEC conducts its investigations on a confidential basis as a matter of policy. The purpose of this policy is to protect the integrity of any investigation from premature disclosure and to protect the privacy of persons involved in our investigations. The SEC generally does not comment on whether it has opened an investigation in a particular matter or the status of its investigations. While this can be frustrating, it is necessary to protect the integrity of the investigative process.

## 13. How will I learn about the opportunity to apply for an award?



We will post on this website [Notices of Covered Action](#) ("NoCA") exceeding \$1 million in sanctions so that anyone who believes they may be eligible will have an opportunity to apply for a whistleblower award. In addition, if staff has been working with you, or if you inquired regarding a posting, we may contact you or your attorney directly to alert you to the opportunity to apply for an award. However, OWB contacting you or your attorney does not mean we have made any determination regarding your eligibility for an award. Additionally, the responsibility to apply for an award before the deadline passes lies solely with the whistleblower. See [Rule 21F-10](#).

OWB sends email alerts to GovDelivery when the NoCA listing is updated. Whistleblowers and other members of the public may sign up to receive an update via email every time the list of NoCAs on OWB's website is updated. OWB typically posts new NoCAs on its website at the end of each month.

#### 14. How do I apply for an award?

Once the case you believe your information led to is posted, you must complete and return [Form WB-APP](#) within 90 calendar days to the Office of the Whistleblower via mail to 100 F Street, NE, Mail Stop 5631, Washington DC 20549, or by fax (703) 813-9322. See [Rule 21F-10](#). Section D of Form WB-APP requires that you provide the case name and notice number for the Covered Action for which you seek an award. If you do not identify a covered action, your application may be considered deficient and you may not be considered for an award. OWB acknowledges receipt of Form WB-APPs by letter. We will notify you when the Claims Review Staff issues a preliminary determination with respect to your award claim. See [Rule 21F-10\(d\)](#). OWB will not be able to give you status updates on your pending application for award.

#### 15. How can I apply for an award in connection with a related action?

Individuals who provide information that leads to successful SEC actions resulting in monetary sanctions over \$1 million may also be eligible to receive an award if the same information led to a related action brought by certain other authorities, such as a parallel criminal prosecution. You must complete and return [Form WB-APP](#) to the Office of the Whistleblower via mail to 100 F Street, NE, Mail Stop 5631, Washington DC 20549, or by fax (703) 813-9322. OWB acknowledges receipt of Form WB-APPs by letter.

If a final order imposing monetary sanctions has been entered in a related action at the time you submit your claim for an award in connection with SEC's action, you must submit your claim for an award in that related action on the same Form WB-APP that you use for the SEC action. If a final order imposing monetary sanctions in a related action has not been entered at the time you submit your claim for an award in connection with a SEC action, you must submit your claim on Form WB-APP within 90 calendar days of the issuance of a final order imposing sanctions in the related action. See [Rule 21F-11](#).

#### 16. What factors does the SEC consider in determining the amount of the award?

The Rules require that we consider many factors in determining the amount of an award based on the unique facts and circumstances of each case.

We may *increase* the award percentage based on the existence of these factors:

- The significance of the information you provided us to the success of any proceeding brought against wrongdoers.
- The extent of the assistance you provide us in our investigation and any successful proceeding.
- Our law enforcement interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of these laws.
- Whether, and the extent to which, you participated in your company's internal compliance systems, such as, for example, reporting the possible securities violations through internal whistleblower, legal or compliance procedures



before, or at the same time, you reported them to us.

We may *reduce* the amount of an award based on these factors:

- If you were a participant in, or culpable for the securities law violation(s) you reported.
- If you unreasonably delayed reporting the violation(s) to us.
- If you interfered with your company's internal compliance and reporting systems, such as, for example, making false statements to your compliance department that hindered its efforts to investigate possible wrongdoing. See Rule 21F-6.

## 17. Can I appeal the SEC's award decision?

You have two opportunities to appeal the award determination. First, OWB will notify you of the preliminary determination of the SEC's claims review staff to recommend that the SEC either grant or deny your award application, and if granted, the percentage amount of your award. You may request reconsideration of this preliminary determination by submitting your response to OWB within 60 days of the later of (i) the issuance of the preliminary determination or (ii) your receipt of the record that was relied upon in making the preliminary determination, if you requested the record within 30 days of the issuance of the preliminary determination. See [Rule 21F-10](#). The claims review staff will consider your response and forward its proposed final determination to the Commission. If the Commission denies your application for an award, you may file an appeal in an appropriate United States Court of Appeals within 30 days of the Commission's final decision being issued. See [Rule 21F-13](#). However, if you are granted an award and the Commission follows the factors described above and the total amount awarded is between 10% and 30% of the monetary sanctions collected in the action, then the Commission's decision is not appealable.

## 18. What rights do I have if my employer retaliates against me for submitting information to the SEC?

Employers may not discharge, demote, suspend, harass, or in any way discriminate against you because of any lawful act done by you in, among other things, (i) providing information to us under the whistleblower program, or (ii) assisting us in any investigation or proceeding based on the information submitted. If you believe that your employer has wrongfully retaliated against you, you may report your concerns to the SEC and we may, in appropriate circumstances, bring an enforcement action against a company.

You can find more information about the Dodd-Frank whistleblower protections, including the time period by which a whistleblower must file a private action in federal court, in [Section 922 of the Dodd-Frank Act](#).

Also, under the Sarbanes-Oxley Act, you may be entitled to file a complaint with the U.S. Department of Labor if you are retaliated against for reporting possible securities law violations. For more details on filing whistleblower complaints under the Sarbanes-Oxley Act, please visit the [Department of Labor's whistleblower website](#).

For more information about retaliation, please see the [retaliation](#) section of the website.

## 19. If I have more questions who can I call?

To help promote the agency's whistleblower program and establish a line of communication with the public, OWB operates a whistleblower hotline where whistleblowers, or would-be whistleblowers, their attorneys, or other members of the public with questions about the program may call. Individuals leave messages on the hotline, which are returned by OWB attorneys within 24 business hours. To protect the identity of whistleblowers, OWB will not leave return messages unless the caller's name is clearly and fully identified on the caller's voicemail message, or unless the caller gives their permission for us to leave a message. If OWB is unable to leave a message because the individual's name is not

identified or if it appears to be a shared voicemail system, OWB attorneys make two additional attempts to contact the individual.

If you would like to speak to an attorney in the Office please call 202-551-4790 and provide your TCR submission number (if you have one) when you leave a message.

*Modified: March 23, 2018*



## Enforcement Cooperation Program

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The SEC Enforcement Division's Cooperation Program includes various measures designed to encourage greater cooperation by individuals and companies in SEC investigations and enforcement actions. The program provides incentives to individuals and companies who come forward and provide valuable information to SEC investigators. The SEC uses an analytical framework to evaluate whether, how much, and in what manner to credit the cooperation by individuals and companies in its investigations and enforcement actions.

### The Benefits of Cooperation

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There is a spectrum of tools available to the Commission and its staff for facilitating and rewarding cooperation by individuals and entities. These benefits to cooperators can range from reduced charges and sanctions in enforcement actions to taking no enforcement action at all.

Cooperation by individuals and entities in SEC investigations and related enforcement actions can contribute significantly to the success of the agency's mission. Information obtained from cooperators helps detect violations of the federal securities laws, increase the effectiveness and efficiency of SEC investigations, and provide important evidence necessary to take enforcement actions. The program gives SEC investigators access to high-quality, firsthand evidence, resulting in stronger cases that can shut down fraudulent schemes earlier than otherwise would be possible.

### Commission statements regarding cooperation

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#### Cooperation by individuals

In January 2010, the Commission issued a [policy statement](#) articulating a framework for evaluating cooperation by individuals in the Commission's investigations and actions. This policy statement identified four general considerations to use in assessing cooperation:

1. Assistance provided by the cooperator. This includes considerations such as the value and nature of the cooperation;
2. Importance of the underlying matter. This includes considerations such as the danger posed to investors by the underlying misconduct;
3. Interest in holding the individual accountable. This includes considerations such as a cooperator's culpability relative to that of other violators; and



4. Profile of the individual. This includes considerations such as acceptance of responsibility for the misconduct.

Information concerning the circumstances under which individuals may receive credit as part of the SEC's cooperation initiative also is available in a litigation release, [SEC Credits Former AXA Rosenberg Executive for Substantial Cooperation during Investigation](#).

March 19, 2012

### Cooperation by entities

In October 2001, the Commission issued a [Report of Investigation and Statement](#) explaining its decision not to take enforcement action against a public company it had investigated for financial statement irregularities. In this report, commonly referred to as the Seaboard Report, the Commission articulated an analytical framework for evaluating cooperation by companies. The report detailed the many factors the Commission considers in determining whether, and to what extent, it grants leniency to investigated companies for cooperating in its investigations and for related good corporate citizenship. Specifically, the report identifies four broad measures of a company's cooperation:

1. Self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top;
2. Self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins and consequences of the misconduct, and promptly, completely and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations;
3. Remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and
4. Cooperation with law enforcement authorities, including providing the Commission staff with all information relevant to the underlying violations and the company's remedial efforts.

## SEC Cases Utilizing Cooperation Tools

The SEC's cooperation program has proven valuable in a wide range of cases spanning the full spectrum of its enforcement program from insider trading and market manipulation to FCPA violations and financial fraud.

Here are some examples:

### Cooperation Agreements

The Enforcement Division has signed many agreements under which it recommends to the Commission that a cooperator receive credit for cooperating in investigations or related enforcement actions if the cooperator provides substantial assistance such as full and truthful information and testimony.

Some cases involving cooperation agreements include:

- [Reverse merger scheme involving China-based companies](#)
- [Coding error at money manager](#)
- [Accounting fraud at animal feed company](#)
- [Fraud on senior citizens who invested \\$75 million in purported charity](#)
- [Revenue recognition scheme](#)
- [Mismanagement of collateralized debt obligations](#)
- [Insider trading in shares of insurance company](#)
- [Subprime bond pricing scheme during credit crisis](#)

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### Deferred Prosecution Agreements

These are agreements under which the Commission agrees to forego an enforcement action against a cooperator if the individual or company agrees to cooperate fully and truthfully and comply with express prohibitions and undertakings during a period of deferred prosecution.

Cases involving DPAs include:

- [A corporate director](#)
- [An individual in an FCPA case](#)
- [Pricing information about residential mortgage-backed securities](#)
- [FCPA violations involving attempted bribes in Qatar](#)
- [Misclassification of impaired loans at a bank](#)
- [Former hedge fund administrator](#)
- [Non-profit fund for mortgages and construction](#)
- [FCPA violations involving bribes in Uzbekistan](#)

### Non-Prosecution Agreements

These agreements are entered into in limited circumstances in which the Commission agrees not to pursue an enforcement action against a cooperator if the individual or company agrees to cooperate fully and truthfully and comply with express undertakings.

Cases involving NPAs include:

- [Two companies](#) who promptly self-reported bribes paid to Chinese officials by foreign subsidiaries, cooperated extensively with the ensuing SEC investigations, and took swift remedial measures
- [Insider trading in shares of e-commerce company](#)
- [FCPA violations involving bribes to Argentinian government officials](#)
- [Misstatements concerning mortgage exposure at Fannie Mae and Freddie Mac](#)
- [Financial fraud at children's clothing marketer](#)

## Email Updates

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### More Information

[The SEC's Cooperation Program: Reflections on Five Years of Experience](#)

[Announcement to Begin Cooperation Program](#)



[Framework for evaluating cooperation by individuals](#)

[Framework for evaluating cooperation by companies](#)

[Enforcement Manual with Details of Tools for Fostering Cooperation](#)

[Contact the SEC's Division of Enforcement](#)

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[Report a potential violation of the securities laws](#)

*Modified: Sept. 20, 2016*





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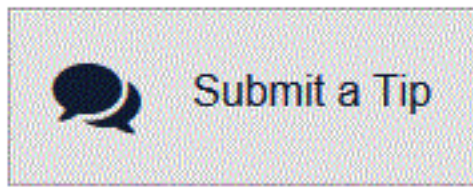
## Office of the Whistleblower



### Submit a Tip

To qualify for an award under the Whistleblower Program, you must submit information regarding possible securities law violations to the Commission in one of the following two ways:

**(1)** By submitting a tip electronically through the SEC's Tips, Complaints and Referrals Portal by clicking the button below.



**\*\*The TCR complaint form is compatible for use with Microsoft Internet Explorer (IE) version 11, Safari, Mozilla Firefox and Google Chrome (please note that use of the Chrome browser may result in some visual format issues including the display of instructional pop up boxes). \*\***

**(2)** By mailing or faxing a [Form TCR](#) to:

**SEC Office of the Whistleblower**  
100 F Street NE  
Mail Stop 5631  
Washington, DC 20549  
Fax: (703) 813-9322

*If you are submitting additional information relating to a previously submitted tip, please reference your original TCR submission number.*

### Contact Us

100 F Street NE  
Mail Stop 5631  
Washington, DC 20549  
Phone: (202) 551-4790  
Fax: (703) 813-9322

### Important Notes

If you submit your information online through the SEC's Tips, Complaints and Referrals Portal, and would like to (1) be eligible to apply for a whistleblower award and/or (2) receive additional confidentiality protections (even if you do not wish to be considered for an award), you must answer "yes" to the question "Are you filing this tip under the SEC's whistleblower program?" on the "About You" page of the online questionnaire. You must also complete the whistleblower declaration at the end of the questionnaire.

The SEC treats all tips, complaints and referrals as confidential and nonpublic, and does not disclose such information to third parties, except in limited





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*Stop Fraud Utah is a joint initiative by Federal, State, and Local law enforcement to educate consumers about financial fraud and how to avoid it.*

*Participating organizations include the U.S. Securities and Exchange Commission, U.S. Attorney's office, Utah Attorney General's Office, Financial Industry Regulatory Authority (FINRA), Utah Division of Securities, U.S. Commodity Futures Trading Commission, Utah Division of Consumer Protection, FBI, IRS and Salt Lake County/Utah County Attorneys offices.*



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## SECURING FUTURES

The SEC enforces the securities laws to protect the more than 65 million American households that have turned to the securities markets to invest in their futures—whether it’s starting a family, sending kids to college, saving for retirement or attaining other financial goals.



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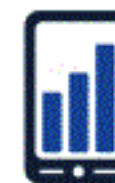
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