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U.S. Securities and Exchange Commission

# Insider Trading: Information on Bounties

Section 21A(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78u-l(e)] authorizes the Securities and Exchange Commission ("Commission") to award a bounty to a person who provides information leading to the recovery of a civil penalty from an insider trader, from a person who "tipped" information to an insider trader, or from a person who directly or indirectly controlled an insider trader. This pamphlet is designed to provide interested persons with information on bounties and the Commission's rules for making a bounty application. Section 21A(e) of the Exchange Act and the Commission's bounty rules are set out at the end of this pamphlet.

## What is "Insider Trading?"

"Insider trading" refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped" and securities trading by those who misappropriate such information. Examples of insider trading cases that have been brought by the Commission are cases against: corporate officers, directors, and employees who traded the corporation's securities after learning of significant, confidential corporate developments; friends, business associates, family members, and other "tippees" of such officers, directors, and employees, who traded the securities after receiving such information; employees of law, banking, brokerage and printing firms who were given such information in order to provide services to the corporation whose securities they traded; government employees who learned of such information because of their employment by the government; and other persons who misappropriated, and took advantage of, confidential information from their employers.

Because insider trading undermines investor confidence in the fairness and integrity of the securities markets, the Commission has treated the detection and prosecution of insider trading violations as one of its enforcement priorities.

## How Much May be Paid as a Bounty?

Insider trading may result in enforcement action by the Commission or in criminal prosecution by the Department of Justice. The Exchange Act permits the Commission to bring suit against insider traders to seek injunctions, which are court orders that prohibit violations of the law under threat of fines and imprisonment. The Commission may also seek other relief against insider traders, including recovery of any illegal gains (or losses avoided) and payment of a civil penalty. The amount of a civil penalty can be up to three times the profit gained (or loss avoided) as a result of insider trading.

The Commission is permitted to make bounty awards from the civil penalties that are actually recovered from violators. With minor exceptions, any person who provides information leading to the imposition of a civil penalty may be paid a bounty. However the total amount of bounties that may be paid from a civil penalty may not exceed ten percent of that penalty.

## **How Will the Commission Make Bounty Determinations?**

All Commission determinations regarding bounties including whether to make a payment, to whom a payment shall be made, and the amount of a payment (if any), are in the sole discretion of the Commission. Any such determination is final and not subject to judicial review. Nothing in the Commission's rules or in this pamphlet is intended to limit the Commission's discretion with respect to bounties.

In making determinations regarding bounty applications the Commission will be guided by the purposes of the bounty provisions. These purposes include the intent of the United States Congress to encourage persons with information about possible insider trading to come forward. The Commission will also consider other factors that it deems relevant. Examples of other factors that may be relevant are: the importance of the information provided by an applicant; whether the information was provided voluntarily; the existence of other applications in the matter; and the amount of the penalty from which bounties may be paid.

Normally, the Commission will not make any determination on a bounty application until a payment of a penalty is both ordered by a court and recovered. A person who files an application meeting the requirements of the Commission's rules will be notified of the Commission's determination on the application.

## **How and When Do You Apply for a Bounty?**

An application must be clearly marked as an "Application for Award of a Bounty," and must contain the information required by the Commission's rules. The application must give a detailed statement of the information that the applicant has about the suspected insider trading.

Any person who desires to provide information to the Commission that may result in the payment of a bounty may do so by any means desired. The Commission encourages persons having information regarding insider trading to provide that information in writing, either at the time they initially provide the information to the Commission or as soon as possible afterwards. Providing information in writing reduces the possibility of error, helps assure that appropriate action will be taken, and minimizes subsequent burdens and the possibility of factual disputes. In any event, a written application for a bounty must be filed within 180 days after the day on which the court orders payment of the civil penalty.

## **Can You Apply for a Bounty Anonymously?**

The Commission recognizes that there may be instances when a bounty

applicant wishes to remain temporarily anonymous. The bounty rules take these instances into account. While the Commission will only award bounties to applicants who provide their identity and mailing address, that information may be added by a later amendment to the application. The amendment must be filed within 180 days after the entry of the court order requiring the payment of the penalty upon which the bounty is based. An anonymous applicant who fails to file such an amendment (and anyone who fails to make a written application) runs the risk of losing eligibility for a bounty through lapse of time and ignorance of the fact that a penalty has been recovered.

Absent compelling cause, the Commission ordinarily does not disclose the identity of a confidential source. In some instances however disclosure of that identity will be legally required, or will be essential for the protection of the public interest. For example, a court may order disclosure during litigation, or the Commission may need to present the testimony of a bounty claimant to ensure the success of an enforcement action. Consequently while the Commission and its staff will give serious consideration to requests to maintain the confidentiality of a source's identity, no guarantees of confidentiality are possible.

## **Statutory and Regulatory Provisions**

### ***Section 21A(e) of the Exchange Act***

[T]here shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payment, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review.

### ***Subpart C of Part 201 of Title 17 of the Code of Federal Regulations***

Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

#### ***Rule 61 Scope of subpart***

Section 21A of the Securities Exchange Act of 1934 authorizes the courts to impose civil penalties for certain violations of that Act. Subsection 21A(e) permits the Commission to award bounties to persons who provide information that leads to the imposition of such penalties. Any such determination, including whether, to whom, or in what amount to make payments, is in the sole discretion of the Commission. This subpart sets forth procedures regarding applications for the award of bounties pursuant to subsection 21A(e). Nothing in this subpart shall be deemed to limit the discretion of the Commission with respect to determinations under subsection 21A(e) or to subject any such determination to judicial review.

#### ***Rule 62 Application required.***

No person shall be eligible for the payment of a bounty under subsection 21A(e) of the Securities Exchange Act of 1934 unless such person has filed

a written application that meets the requirements of this subpart and, upon request, provides such other information as the Commission or its staff deems relevant to the application.

***Rule 63 Time and place of filing.***

Each application pursuant to this subpart and each amendment thereto must be filed within one hundred eighty days after the entry of the court order requiring the payment of the penalty that is subject to the application. Such applications and amendments shall be addressed to: Office of the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

***Rule 64 Form of application and information required.***

Each application pursuant to this subpart shall be identified as an Application for Award of a Bounty and shall contain a detailed statement of the information provided by the applicant that the applicant believes led or may lead to the imposition of a penalty. Except as provided by Rule 65 of this subpart, each application shall state the identity and mailing address of, and be signed by, the applicant. When the application is not the means by which the applicant initially provides such information, each application shall contain: the dates and times upon which, and the means by which, the information was provided; the identity of the Commission staff members to whom the information was provided; and, if the information was provided anonymously, sufficient further information to confirm that the person filing the application is the same person who provided the information to the Commission.

***Rule 65 Identity and signature.***

Applications pursuant to this subpart may omit the identity, mailing address, and signature of the applicant; provided that such identity, mailing address and signature are submitted by an amendment to the application. Any such amendment must be filed within one hundred eighty days after the entry of the court order requiring the payment of the penalty that is subject to the application.

***Rule 66 Notice to applicants.***

The Commission will notify each person who files an application that meets the requirements of this subpart, at the address specified in such application, of the Commission's determination with respect to such person's application. Nothing in this subpart shall be deemed to entitle any person to any other notice from the Commission or its staff.

***Rule 67 Applications by legal guardians.***

An application pursuant to this subpart may be filed by an executor, administrator, or other legal representative of a person who provides information that may be subject to a bounty payment or by the parent or guardian of such a person if that person is a minor. Certified copies of the letters testamentary, letters of administration, or other similar evidence showing the authority of the legal representative to file the application must be annexed to the application.

***Rule 68 No promises of payment.***

No person is authorized under this subpart to make any offer or promise, or

otherwise to bind the Commission with respect to the payment of any bounty or the amount thereof.

*<http://www.sec.gov/divisions/enforce/insider.htm>*

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