SEC enforcement actions under exchange act rule 21F-17

Thomas W. White

Abstract

Purpose – *To review recent enforcement actions in which the Securities and Exchange Commission ("SEC") enforced Rule 21F-17(a) under the Securities Exchange Act, which prohibits actions to impede whistleblower communications with the SEC, and to identify changes that entities subject to SEC regulation (including public companies, broker-dealers and investment managers) may wish to consider in their employee separation agreements and other documents that may include confidentiality provisions.*

Design/methodology/approach – *Examines settled cases since 2015, in which the SEC found that contractual provisions in employee separation agreements and other documents impeded employees from communicating with the SEC staff about possible violations of the securities laws, to identify the types of language that the SEC found to be problematic and the types of provisions that the SEC believes are desirable, if not legally mandated, to protect employee whistleblower rights and avoid impeding communications under Rule 21F-17(a).*

Findings – *Beginning in 2015, the SEC has actively enforced Rule 21F-17(a), focusing on provisions in separation agreements and other employee-related documents that potentially prevent employees from reporting legal violations to the SEC. The SEC's efforts have resulted in settled orders involving alleged violations of the rule. The cases generally allege that provisions in employee separation agreements or other documents violated the rule because they prohibited or chilled employee communications with the SEC about possible legal violations.*

Practical implications – *Entities subject to SEC regulation (including public companies, broker-dealers and investment managers) should review their confidentiality agreements with employees and consider whether changes are warranted to address the SEC's concerns as identified in the Rule 21F-17(a) cases.*

Originality/value – *Practical guidance regarding important whistleblower developments from experienced securities lawyer.*

Keywords *US Securities and Exchange Commission (SEC), Separation agreement, Whistleblowers*

Paper type *Technical paper*

Thomas W. White (thomas.white@wilmerhale.com) is a partner at Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, USA.

Securities and Exchange Commission ("SEC") Rule 21F-17(a) prohibits "any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement [. . .] with respect to such communications"[1]. The rule, which was adopted in August 2011, is part of the SEC's regulations that establish a program to give cash awards to whistleblowers who provide original information that results in a monetary recovery in a successful SEC enforcement action[2].

Beginning in 2015, the SEC has actively enforced Rule 21F-17, focusing on provisions in separation agreements and other employee-related documents that potentially prevent employees from reporting legal violations to the SEC staff. The SEC's efforts have resulted in settled orders involving alleged violations of Rule 21F-17(a). The cases generally allege that provisions in employee separation agreements or other contracts violated the rule because they prohibited or chilled employee communications with the SEC staff about possible legal violations. Notably, in most cases, the SEC did not allege that anyone was

© Wilmer Cutler Pickering Hale and Dorr LLP.

actually prevented by the provisions at issue from communicating with the SEC, or that the agreements were enforced to prevent such communications. Nonetheless, the SEC has taken the position that the provisions themselves are actionable under Rule 21F-17(a).

This article reviews these cases and identifies the types of contractual terms that the SEC may find violate Rule 21F-17(a) and the types of contractual provisions the SEC appears to believe are desirable, if not legally mandated, to protect employee whistleblower rights and avoid impeding communications under Rule 21F-17. Entities subject to SEC regulation (including public companies, broker-dealers and investment managers) should review their confidentiality agreements with employees and consider whether changes are warranted to address the SEC's concerns as identified in the cases.

The SEC cases

Law department authorization required to discuss interview–KBR

The SEC's enforcement drive began with its April 1, 2015, cease-and-desist order in *In the Matter of KBR, Inc.*[3]. At issue in *KBR* was a form confidentiality statement the company used when conducting internal investigations of alleged misconduct reported by company employees. The confidentiality statement required individuals interviewed during an internal investigation to agree as follows:

> I understand that in order to protect the integrity of this review, I am prohibited from discussing any particulars regarding this interview and the subject matter discussed during the interview, without the prior authorization of the Law Department. I understand that the unauthorized disclosure of information may be grounds for disciplinary action up to and including termination of employment[4].

The SEC acknowledged that it was not aware of any instance in which this confidentiality statement prevented any employee from reporting a possible securities law violation to the SEC[5]. Nor was the SEC aware of any instance in which KBR sought to enforce the confidentiality statement so as to prevent an employee from reporting an alleged securities law violation to the SEC[6]. Nevertheless, the SEC believed that the confidentiality statement alone constituted a violation of Rule 21F-17(a) because "the language found in the form confidentiality statement impedes such communications by prohibiting employees from discussing the substance of their interview without clearance from KBR's law department under penalty of disciplinary action including termination of employment"[7]. According to the SEC, the "language undermines the purpose of Section 21F and Rule 21F-17(a), which is to 'encourage[e] [sic] individuals to report to the Commission'"[8].

In response to the SEC's investigation, KBR amended the confidentiality statement to include the following:

> Nothing in this Confidentiality Statement prohibits me from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. I do not need the prior authorization of the Law Department to make any such reports or disclosures and I am not required to notify the company that I have made such reports or disclosures[9].

KBR also agreed to use reasonable efforts to contact former US employees who signed the confidentiality statement from August 21, 2011 to the date of the order, and provide them with a copy of the order and a statement that KBR does not require the employee to seek permission from the general counsel of KBR before communicating with any governmental agency or entity regarding possible violations of law or regulation[10].

Waiver of right to monetary recovery–BlueLinx

On August 10, 2016, the SEC announced a cease-and-desist order against Atlanta-based building products distributor BlueLinx Holdings, Inc.[11]. According to the SEC, from at least August 2011, when the SEC's whistleblower rules took effect, BlueLinx used severance agreements that prohibited employees from sharing the company's confidential information but included no exemption for voluntary communications with the SEC or other regulatory or law enforcement agencies[12]. Instead, most of BlueLinx's severance agreements permitted employees to share confidential information only when compelled to do so by law and then only after first notifying the company[13]. BlueLinx amended the release provisions in each of its severance agreements in June 2013 to expressly permit reporting to the SEC but included a requirement that employees waive the right to any monetary recovery in connection with any complaint filed with the SEC. BlueLinx's release language stated:

> Employee further acknowledges and agrees that nothing in this Agreement prevents Employee from filing a charge with [. . .] the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, *the Securities and Exchange Commission* or any other administrative agency if applicable law requires that Employee be permitted to do so; *however, Employee understands and agrees that Employee is waiving the right to any monetary recovery in connection with any such complaint or charge that Employee may file with an administrative agency*[14].

Around the same time, BlueLinx also revised a confidentiality clause in one form of its severance agreements to state:

> [The Employee shall not] disclose to any person or entity not expressly authorized by the Company any Confidential Information or Trade Secrets [. . .] Anything herein to the contrary notwithstanding, you shall not be restricted from disclosing or using Confidential Information or Trade Secrets that are required to be disclosed by law, court or other legal process; provided, however, that in the event disclosure is required by law, you shall provide the Company's Legal Department with prompt written notice of such requirement in time to permit the Company to seek an appropriate protective order or other similar protection prior to any such disclosure by you[15].

The SEC concluded that these provisions impeded BlueLinx employees' participation in the SEC's whistleblower program. According to the SEC, "y[b] requiring departing employees to notify the company's Legal Department prior to disclosing any financial or business information to any third parties without expressly exempting the Commission from the scope of this restriction, [the company] forced those employees to choose between identifying themselves to the company as whistleblowers or potentially losing their severance pay and benefits"[16]. The SEC further stated that "by requiring its departing employees to forgo any monetary recovery in connection with providing information to the Commission, BlueLinx removed the critically important financial incentives that are intended to encourage persons to communicate directly with the Commission staff about possible securities law violations"[17].

As part of the settlement, BlueLinx agreed to amend its severance agreements to include the following provision:

> Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission ("Government Agencies"). Employee further understands that this Agreement does not limit Employee's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does

> not limit Employee's right to receive an award for information provided to any Government Agencies[18].

BlueLinx also agreed to make reasonable efforts to contact former employees who had executed severance agreements after August 12, 2011, to provide those employees with a link to the SEC's order, and to notify them that BlueLinx does not prohibit former employees from providing information to the SEC staff or from accepting SEC whistleblower awards[19].

Waiver of right to monetary recovery–Health Net

Less than one week after the BlueLinx settlement, on August 16, 2016, the SEC announced a settlement in which it alleged that California-based health insurance provider Health Net, Inc. used severance agreements expressly requiring outgoing employees to waive their ability to obtain SEC whistleblower awards[20]. Health Net's release form, as amended in August 2011, required an employee to waive "the right to file an application for award for original information submitted pursuant to Section 21F of the Securities Exchange Act of 1934"[21]. Another clause in the release provided that:

> [. . .] nothing in this Release precludes Employee from participating in any investigation or proceeding before any federal or state agency, or governmental body [. . .] however, while Employee may file a charge and participate in any such proceeding, by signing this Release, Employee waives any right to bring a lawsuit against the Company, and waives any right to any individual monetary recovery in any such proceeding or lawsuit or in any proceeding brought based on any communication by Employee to any federal, state, or local government agency or department[22].

The SEC's order noted that Health Net removed the express language prohibiting employees from filing applications for SEC whistleblower awards in June 2013, and added an explicit exemption for reporting information to regulators[23]. The new exemption provided that "[n]othing herein shall be construed to impede the employee from communicating directly with, cooperating with or providing information to any government regulator"[24]. However, Health Net's revised release form still required employees to waive their right to any individual monetary recovery in connection with such reports[25]. The SEC's order states that Health Net amended its severance agreements on October 22, 2015, to remove the problematic language described above[26].

The SEC acknowledged that it found no evidence of any instances in which a former Health Net employee who executed the allegedly violative agreements did not communicate directly with Commission staff about potential securities law violations, nor did the SEC find any evidence that Health Net took action to enforce the release provisions or otherwise prevent such communications[27]. Nonetheless, the SEC concluded that both the 2011 and the 2013 provisions violated Rule 21F-17 by removing the financial incentive for Health Net's former employees who executed these severance agreements to communicate with Commission staff concerning possible securities law violations at Health Net[28].

Health Net agreed to make reasonable efforts to contact former employees who signed the release form between August 12, 2011, and October 22, 2015, and provide those employees with a link to the SEC's order and a statement that "Health Net does not prohibit former employees from seeking and obtaining a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Exchange Act"[29].

Liquidated damages for breaching non-disclosure clause–Anheuser-Busch InBev

A September 28, 2016, settlement of an Foreign Corrupt Practices Act case between the SEC and Anheuser-Busch InBev SA/NV ("AB InBev") also included allegations of violations of Rule 21F-17(a)[30]. According to the SEC's order, in December 2012, AB InBev entered into an employee separation agreement with an employee who had reported potentially improper payments to Indian government officials[31]. The separation agreement required

the employee to maintain the company's confidential and proprietary information "in strict secrecy and confidence", and also included a $250,000 liquidated damages penalty if the employee violated the non-disclosure terms[32]. The SEC's order alleges that, after signing the separation agreement, the employee, who was previously voluntarily communicating directly with SEC staff, stopped doing so[33]. The SEC said that AB InBev's separation agreement impeded the employee from communicating directly with the SEC staff about possible securities law violations, in violation of SEC Rule 21F-17(a)[34].

As part of the relief in the case, AB InBev agreed to make reasonable efforts to notify certain former employees that AB InBev did not prohibit employees from contacting the SEC about possible legal violations[35].

Non-disparagement clause prohibiting government reporting–NeuStar

On December 19, 2016, NeuStar, Inc. settled a charge that it violated Rule 21F-17(a) when it included in severance agreements a broad non-disparagement clause that expressly prohibited the employee from communicating negative information about the company and others to, among others, government agencies including the SEC[36]. The non-disparagement provision at issue read:

> [E]xcept as specifically authorized in writing by NeuStar or as may be required by law or legal process, I agree not to engage in any communication that disparages, denigrates, maligns or impugns NeuStar or its officers, directors, shareholders, investors, potential investors, partners, predecessors, subsidiaries, employees, consultants, attorneys, or any others associated with NeuStar, including but not limited to communications with accountants, investment bankers, commercial bankers, insurance brokers or carriers, media, journalists, reporters, equity analysts, investors, potential investors, customers, suppliers, competitors, joint venture partners and regulators (including but not limited to the *Securities and Exchange Commission*, [. . .] [37].

The form of severance agreement also provided that, in the event of a breach, the employee would forfeit all but $100 of the severance compensation payable under the agreement[38]. The SEC stated that while the company did not attempt to enforce the non-disparagement clause, "at least one" former employee was impeded from communicating with the SEC[39].

The order notes that NeuStar dropped references to "regulators" from the clause promptly and voluntarily after the SEC's investigation began[40]. The company also revised the clause to include affirmative language advising former employees of their right to contact regulators: "[N]othing herein prohibits me from communicating, without notice to or approval by NeuStar, with any federal government agency about a potential violation of a federal law or regulation"[41]. The company agreed to make reasonable efforts to contact the former employees who signed form of the agreement with the violative language and tell them that the company does not prohibit the former employees from communicating with the SEC about legal violations[42].

Express prohibition on contacts with government agencies–SandRidge Energy

On December 20, 2016 – the day after the *NeuStar* order – SandRidge Energy, Inc., settled SEC charges that SandRidge had violated Rule 21F-17(a) by including covenants in separation agreements that prohibited communications with government agencies[43]. According to the SEC order, SandRidge used a form of separation agreement from August 2011 to April 2015 that precluded the former employee from voluntarily cooperating with a government agency in any complaint or investigation concerning the company. The agreement provided that a former employee could not:

> [. . .] at any time in the future voluntarily contact or participate with any governmental agency in connection with any complaint or investigation pertaining to the Company, and [may] not be employed or otherwise act as an expert witness or consultant or in any similar paid capacity in any litigation, arbitration, regulatory or agency hearing or other adversarial or investigatory proceeding involving the Company[44].

The form separation agreement also contained a confidentiality provision that required employees to agree not to disclose any of the company's confidential or proprietary information to any other person or organization, "including any governmental agency"[45]. The agreement also prohibited the former employee from making disparaging statements about the company and others to, among others "any governmental or regulatory agency"[46].

The SEC stated that after Rule 21F-17 was adopted, several employees or officers requested that the problematic language be modified in severance agreements submitted to them. SandRidge agreed to modify the language when an employee explicitly required it, but the company continued to use the violative language in agreements that were provided to employees who did not identify the issue[47].

The SEC stated that the "potential for its officers and employees to communicate with the Commission was not merely a hypothetical concern for SandRidge", because many of these agreements were in effect during a time when SandRidge was subject to investigation by the SEC. The SEC was not able to determine if any former officers or employers did not report to or communicate with the SEC because of the violative provisions. However, the SEC stressed that the violative provisions "expressly limited an employee's ability to communicate possible securities law violations with any governmental agency"[48].

Express waiver of Dodd-Frank whistleblower incentives–BlackRock

On January 17, 2017, the SEC issued a settled order finding that BlackRock, Inc., had violated Rule 21F-17(a) by revising its form separation agreement to include language requiring a departing employee to waive recovery of incentives for reporting misconduct under, among other things, the Dodd-Frank Act[49]. While the agreement did not prohibit communications by employees with the SEC or other government agencies about potential violations of law[50], the agreement did state:

> To the fullest extent permitted by applicable law, you hereby release and forever discharge, BlackRock, as defined above, from all claims for, and you waive any right to recovery of, incentives for reporting of misconduct, including, without limitation, under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Sarbanes-Oxley Act of 2002, relating to conduct occurring prior to the date of this Agreement[51].

The SEC stated that this provision "directly targeted the SEC's whistleblower program by removing the critically important financial incentives that are intended to encourage persons to communicate directly with the Commission staff about possible securities law violations"[52]. The SEC acknowledged that it was unaware of instances in which a former employee who signed the agreement did not communicate with the SEC staff about potential violations or in which BlackRock took action to enforce the provision or otherwise prevent such communications[53].

BlackRock implemented a range of remedial actions. These included providing all employees with mandatory yearly training that includes a summary of and link to a policy for reporting illegal and unethical conduct. The policy summarizes an employee's rights with respect to reporting potential violations of law to the SEC or other government agencies or self-regulatory authorities. BlackRock also updated its code of conduct and other relevant agreements, policies and procedures to ensure that employees understand there is no restriction on their right to make reports to the government[54].

Waiver of monetary recovery–HomeStreet

Two days after announcing its settlement with BlackRock, on January 19, 2017 the SEC issued another order, this time against HomeStreet, Inc., finding that the company's severance provisions that restricted monetary recoveries based on reporting to

government agencies violated Rule 21F-17(a)[55]. The relevant separation agreement provision provided:

> This release shall not prohibit Employee from filing a charge with the Equal Employment Opportunity Commission or discussing any matter relevant to Employee's employment with any government agency with jurisdiction over the Company but shall be considered a waiver of any damages or monetary recovery therefrom[56].

As in other cases, the SEC concluded that the restriction on monetary recovery removed the financial incentives provided by the whistleblower award program to encourage persons to communicate with the SEC staff about possible securities law violations[57]. HomeStreet's remedial actions included revising its standard severance agreements to incorporate the following language:

> Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with any federal, state or local governmental agency or commission ("Government Agencies"). Employee further understands that this Agreement does not limit Employee's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be commenced by any Government Agency including providing documents or other information without notice to the Company. This Agreement does not limit the Employee's right to receive an award for information provided to any Government Agencies[58].

Problematic provisions based on the SEC cases

There is room for debate whether the SEC's enforcement actions under Rule 21F-17(a) are a correct application of the rule. Still, the SEC has pursued these cases aggressively, though it remains to be seen if this initiative will be affected by the recent changes in leadership at the SEC. Taken together, the SEC may be viewed in these cases as establishing standards for acceptable terms in employee separation agreements, as well as corporate employee codes, policy manuals and training materials.

From the cases described above, it is possible to identify the general types of contractual or other provisions that the SEC will consider problematic. These include:

- Direct prohibitions on communications with the SEC or with government agencies generally (*SandRidge*,), including non-disparagement clauses (*NeuStar*);
- Limitations on scope of permissible communications to government agencies, *e. g.*, only in response to orders from courts or other government authorities (*BlueLinx*);
- Requirements for notice to, and/or authorization by, the company of any voluntary communications to government agencies (*KBR*, *BlueLinx*);
- Waivers of rights to awards or monetary recoveries based on reporting to government agencies, either by reference to the SEC whistleblower program explicitly (*Health Net*, *BlackRock*) or generically (*BlueLinx*, *HomeStreet*); and
- Forfeitures or liquidated damages for breach if employee communicates with the government (*AB InBev*, *NeuStar*).

The settlements also indicate the types of provisions that the SEC believes are desirable, if not legally mandated, to protect employee whistleblower rights and avoid impeding communications under Rule 21F-17(a). These include:

- An affirmative statement that employees are permitted to voluntarily communicate with government agencies regarding possible violations of law. Importantly, while Rule 21F-17(a) only extends to communicating regarding possible violations of the securities laws, the revised language adopted by companies in the cases extends to communications with any government agency or self-regulatory authority regarding any legal violation. (*KBR*, *NeuStar*);

- An express statement that the person may make communications without notice to, or approval by, the company (*KBR*,); and
- An express acknowledgement by the company that the agreement does not prevent the employee from receiving an award for reporting information about possible legal violations to an agency (*BlueLinx*, *Health Net*, *HomeStreet*).

In sum, companies should carefully review their forms of employee agreements, as well as employee codes, policies and other documents that implicate employment confidentiality obligations. Companies should consider revising these documents if they contain provisions that the SEC might view as contravening Rule 21F-17(a).

Notes

1. 17 C.F.R. § 240.21F-17(a).
2. *See* 17 C.F.R. § 240.21F-2(a)(2). The whistleblower program was established pursuant to Section 21F of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-6, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 922, 111th Cong., 2d sess. (July 21, 2010).
3. Order Instituting Cease-And-Desist Proceedings, *In the Matter of KBR, Inc.*, Exchange Act Release No. 34-74619, 111 SEC Docket 4 (Apr. 1, 2015) ("KBR Order").
4. *Id.* ¶ 6.
5. *Id.* ¶ 7.
6. *Id.*
7. *Id.*
8. *Id.*, quoting *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Exchange Act Release No. 34-64545, at 201 (May 25, 2011).
9. KBR Order ¶ 8.
10. *Id.* ¶ 10.
11. Order Instituting Cease-And-Desist Proceedings, *In the Matter of BlueLinx Holdings, Inc.*, Exchange Act Release No. 34-78528, 114 SEC Docket 15 (Aug. 10, 2016).
12. *Id.* ¶ 7.
13. *Id.*
14. *Id.* ¶ 14 (emphasis in original).
15. *Id.* ¶ 13.
16. *Id.* ¶ 16.
17. *Id.* ¶ 17.
18. *Id.* ¶ 20.
19. *Id.* ¶ 21.
20. Order Instituting Cease-And-Desist Proceedings, *In the Matter of Health Net, Inc.*, Exchange Act Release No. 34-78590, 114 SEC Docket 16 (Aug. 16, 2016).
21. *Id.* ¶ 8.
22. *Id.* ¶ 10.
23. *Id.* ¶ 12.

24. *Id.*

25. *Id.*

26. *Id.* ¶ 5.

27. *Id.* ¶ 13.

28. *Id.* ¶¶ 13-14.

29. *Id.* ¶ 15.

30. Order Instituting Cease-And-Desist Proceedings, *In the Matter of Anheuser-Busch InBev SA/NV*, Exchange Act Release No. 34-78957, 115 SEC Docket 2 (Sept. 28. 2016).

31. *Id.* ¶ 2.

32. *Id.* ¶¶ 24, 26.

33. *Id.* ¶ 27.

34. *Id.* ¶ 40.

35. *Id.* pt. IV, ¶ F.

36. Order Instituting Cease-and-Desist Proceedings, *In re NeuStar, Inc.*, Exchange Act Release No. 34-79593, 115 SEC Docket 14 (Dec. 19, 2016).

37. *Id.* ¶ 5.

38. *Id.* ¶ 6.

39. *Id.* ¶ 8.

40. *Id.* ¶ 10.

41. *Id.*

42. *Id.* ¶ 11.

43. Order Instituting Cease-and-Desist Proceedings, *In re SandRidge Energy, Inc.*, Exchange Act Release No. 34-79607, 115 SEC Docket 14 (Dec. 20, 2016) ("SandRidge Order"). The SEC also alleged that SandRidge had retaliated against a whistleblower who had attempted to raise concerns internally about the company's processes for valuing oil reserves, in violation of Section 21F-17(h) of the Exchange Act, 15 U.S.C. § 78u-6(h).

44. SandRidge Order ¶ 6.

45. *Id.* ¶ 7.

46. *Id.* ¶ 8.

47. *Id.* ¶ 9.

48. *Id.* ¶ 13.

49. Order Instituting Cease-and-Desist Proceedings, *In re BlackRock, Inc.*, Exchange Act Release No. 34-79804, 115 SEC Docket 18 (Jan. 17, 2017).

50. *Id.* ¶ 6.

51. *Id.* ¶ 7.

52. *Id.* ¶ 10.

53. *Id.*

54. *Id.* ¶¶ 12-13.

55. Order Instituting Cease-and-Desist Proceedings, *In re HomeStreet, Inc. and Darrell Van Amen*, Exchange Act Release No. 34-79844, 115 SEC Docket 18 (Jan. 19, 2017). The case also involved accounting violations by HomeStreet and a senior office. The SEC also asserted that other actions by the company, including trying to determine the identify of a whistleblower and suggesting that it might deny indemnification to a whistleblower, impeded individuals from communicating with the SEC staff about possible securities law violations.

56. *Id.* ¶ 39.

57. *Id.* ¶ 40.

58. *Id.* ¶ 43.

Corresponding author

Thomas W. White can be contacted at: thomas.white@wilmerhale.com

For instructions on how to order reprints of this article, please visit our website:
www.emeraldgrouppublishing.com/licensing/reprints.htm
Or contact us for further details: permissions@emeraldinsight.com