

SDNY Backs SEC Whistleblower Protections, Clarifying Their Scope

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On November 17, a federal judge in the Southern District of New York [ruled](#) that a sports memorabilia company violated the Securities and Commission's (SEC) whistleblower protections when it sued to silence and intimidate investors. A blow against the company and its [FBI-Wanted](#) CEO in the SEC's civil fraud case against the defendants, the ruling gives a clear statement that the "individuals" contemplated by Rule 21F-17 expands beyond employee whistleblowers.

At issue before the court was whether the SEC exceeded its authority in promulgating Rule 21F-17 and whether Rule 21F-17 violates the First Amendment to the U.S. Constitution. On both points, U.S. District Judge Victor Marrero reiterated a firm "no" — the SEC did not exceed its authority in promulgating the rule and nor does the rule violate free speech.

[Rule 21F-17](#) prohibits any person from acting "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."

The court noted that — in addition to entering into investor settlement agreements that prohibited the investors from contacting any third party, including "governmental or administrative agencies or enforcement bodies, for the purpose of commencing or otherwise prompting investigation or other action" — the company and its CEO filed a lawsuit against the company's investors to discourage the investors from reporting potential violations to the SEC, and engaged in a campaign to market and advertise those suits to further impede any whistleblowing.

The company and CEO previously argued that Rule 21F-17 applies only to employee whistleblowers, but the result before Judge Marrero remained the same — "nothing in the statute's text nor the supporting documents indicates that Congress intended to protect only those whistleblowers who are employees." Put differently, the court held that whistleblower protections expand beyond employees to reach, at least, investors.

If you have any questions regarding SEC whistleblower protections, recently issued Risk Alerts, your firm's policies or procedures, or anything otherwise relating to the above alert, please do not hesitate to reach out to Troutman Pepper's Securities Investigations and Enforcement team for guidance.

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