

Articles + Publications | September 15, 2023

SEC Charges Privately Held Monolith Resources for Violating Whistleblower Protection Rules

WRITTEN BY

Jay A. Dubow | Ghillaine A. Reid | Sheri P. Adler

On September 8, the U.S. Securities and Exchange Commission (SEC) announced that it settled [charges](#) against Monolith Resources LLC, a privately held technology and energy company headquartered in Nebraska. The SEC's enforcement action alleged that Monolith had been using restrictive employee separation agreements that violated the SEC Whistleblower Protection Rule 21F-17. Without admitting or denying the SEC's findings, Monolith agreed to revise its separation agreements and pay a \$225,000 penalty, among other remedial actions.

Though the SEC has [previously](#) dealt with similar allegations regarding whistleblower restrictions in companies' separation agreements, the SEC's press release highlighted the fact that it was charging a privately held company with violating Rule 21F-17, something that it has not often done.

Background

Monolith is a privately held Delaware company headquartered in Lincoln, NE.

According to the [SEC's order](#), Monolith's separation agreements required certain departing employees to waive their right to receive monetary awards for filing or participating in investigations by governmental agencies. While the agreements did not prohibit employees from filing charges or claims with governmental agencies, the SEC alleges that the language prohibiting employees from receiving financial incentives created an impediment to participation in the SEC Whistleblower Program.

The SEC stressed that financial incentives are meant to encourage whistleblowers to report possible violations of the securities laws and are central to the Whistleblower Program. The SEC's [Rule 21F-17](#) promotes this purpose by prohibiting companies from interfering with an individual's effort to communicate with the SEC. Specifically, Rule 21F-17 prohibits companies from taking "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."

The order alleges that although the SEC is unaware of any times when Monolith sought to enforce the prohibition in its agreements, Monolith's restrictions violated Rule 21F-17 by requiring employees to forgo the critical financial incentives meant to encourage them to communicate directly with the SEC with regard to allegations of potential violations of the federal securities laws.

In the SEC's [press release](#), Jason J. Burt, regional director of the SEC's Denver office explained that "both

private and public companies must understand that they cannot take actions or use separation agreements that in any way disincentivize employees from communicating with SEC staff about potential violations of the federal securities laws. Any attempt to stifle or discourage this type of communication undermines our regulatory oversight and will be dealt with appropriately.”

Monolith used the restrictive agreements for about three years, from February 2020 until early March 2023. During that time, 22 employees signed the agreements. After the SEC contacted Monolith in April 2023, the company voluntarily updated its separation agreements and notified the employees who had signed the prior agreement that their ability to obtain financial awards for whistleblower activities is no longer restricted. Monolith has also agreed to pay a \$225,000 penalty to settle the charges.

Takeaway

This enforcement action highlights that the SEC is focused on compliance by both public and private companies with Rule 21F-17.

Moreover, it is yet another reminder that the SEC pays close attention to companies’ separation agreements. Not that long ago, in February 2023, Activision Blizzard, a video game company, [settled charges](#) with the SEC for executing separation agreements that discouraged employees from speaking to regulators after they departed the company.

Going forward, both public and private companies should review documents such as separation agreements, releases, confidentiality agreements, employment agreements, and employee handbooks, and revise, if necessary, any provisions that may discourage employees from communicating with the SEC about potential securities laws violations and collecting rewards in connection therewith, or otherwise run afoul of SEC Rule 21F-17.

Members of the Troutman Pepper team are available to assist on any SEC developments.

Millie Krajnaja, an associate with Troutman Pepper, also contributed to this article. She is not licensed to practice law in any jurisdiction; her bar application is pending in Pennsylvania.

RELATED INDUSTRIES + PRACTICES

- [Employee Benefits + Executive Compensation](#)
- [Labor + Employment](#)
- [White Collar Litigation + Investigations](#)