

From: [Neil Simon](#)
To: [Anderson, Faith \(DFI\)](#)
Cc: [Sarah Buescher](#); [Gail Bernstein](#)
Subject: RE: Request for feedback on preliminary draft of NASAA model state whistleblower legislation [DO NOT ENCRYPT]
Date: Tuesday, March 3, 2020 8:41:54 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)

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Ms. Anderson,

Thank you very much for providing the IAA the opportunity to provide informal and confidential feedback on the preliminary draft of NASAA's model state whistleblower legislation. We fully support the concept of providing whistleblower protections to those who report violations of the law. However, we have some concerns about the scope of the draft legislation.

As you know, Section 922 of the Dodd-Frank Act added Section 21F to the Securities Exchange Act of 1934 to provide whistleblower protection for persons who report violations of the federal securities laws and the rules thereunder to the SEC. SEC Rule 21F-2 under the Exchange Act implements this provision. It defines a "whistleblower" as someone who provides the SEC with information that "relates to a possible violation of the federal securities laws (including any rules or regulations thereunder) that has occurred, is ongoing, or is about to occur."

Application of the draft legislation to the reporting of possible violations of federal securities laws and related rules and regulations by SEC-registered investment advisers would be duplicative of the already robust federal framework and such legislation is not necessary to achieve the objective of protecting individuals who come forward with original information about violations. To the extent that a whistleblower has information about possible violations of the federal securities laws or related rules or regulations by an SEC-registered investment adviser, we believe that information should be reported to the SEC pursuant to the federal whistleblower provisions, and not to a separate state authority.

In our view, it would be helpful for NASAA to clarify in the draft legislation that possible violations of the federal securities laws (including any rules or regulations thereunder) by an SEC-registered investment adviser should be reported to the SEC pursuant to the SEC's whistleblower program. Revising the definition of "whistleblower" in the draft legislation to include possible violations of state securities laws, including any rules or regulations thereunder, and excluding federal securities laws and related rules and regulations, would address our concerns about unnecessary duplication.

We would be happy to discuss our comments with you in more detail. Please contact me if you would like to schedule a call.

Neil A. Simon

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From: Anderson, Faith (DFI) [mailto:Faith.Anderson@dfi.wa.gov]
Sent: Wednesday, February 05, 2020 2:22 PM
To: Neil Simon
Subject: Request for feedback on preliminary draft of NASAA model state whistleblower legislation [DO NOT ENCRYPT]

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Dear Mr. Simon,

I am writing to invite you to provide informal and confidential feedback on the attached draft of model state legislation to create whistleblower awards for individuals that report securities law violations. While NASAA has not formally proposed a model law on this topic, I am leading a NASAA working group that is focused on the possible development of such legislation for eventual consideration by NASAA members. We are interested in your preliminary feedback prior to developing a formal draft for internal NASAA member comment or public comment. So that we may consider your feedback prior to the next step in the process, we'd appreciate hearing from you by March 3, 2020.

The attached discussion draft draws upon the whistleblower award provisions contained in Section [922](#) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC's related rules in Regulation [21F](#), Indiana Code § [23-19-7](#), and Utah Code § [61-1-101](#) et. seq. In summary, the draft:

- Provides a state's securities regulator with the authority to make monetary awards to whistleblowers based on the amount of monetary sanctions collected in the related administrative or judicial action.
- Provides that the aggregate amount of awards made in connection with an administrative or judicial action shall be 10-30% of the monetary sanctions collected.
- Sets forth certain non-exclusive factors to be considered in determining the amount of an award.
- Disqualifies certain individuals from being eligible to receive a whistleblower award.

Prohibits retaliation by an employer against a whistleblower.

- Creates a cause of action and establishes relief for whistleblowers that are retaliated against by their employer.
- Exempts information that would identify the whistleblower from public disclosure.
- Invalidates waivers of the rights and remedies available under the act.
- Invalidates predispute arbitration agreements concerning disputes under the act.
- Contains an optional bracketed provision granting rulemaking authority under the act to the securities regulator.

If you would like to discuss the draft, please let me know. We look forward to hearing from you.

Sincerely,

Faith L. Anderson, Esq.

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