

SDNY: Confidentiality Agreement Impeded Investors from Whistleblowing

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On November 17, 2021, the U.S. District Court for the Southern District of New York held that a company and its CEO violated Rule 21F-17 of the Exchange Act by entering into confidentiality agreements with investors that prohibited communications with the SEC, and subsequently attempting to enforce those agreements. [SEC v. Collectors Coffee Inc.](#), No. 19-cv-4355.

Background. As we previously [reported](#) in 2019, the SEC sued Collector's Coffee, an online auction platform for sports memorabilia, and its CEO, for allegedly defrauding investors and impeding their communications with the SEC in violation of Rule 21F-17. Rule 21F-17, adopted after the passage of the Dodd-Frank Act, 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 ... with respect to such communications."

As discussed in our July 2021 [update](#), the Court previously held that Rule 21F-17 applies to investors as well as employees, finding that the broad definition of "whistleblower" under Section 21F of the Exchange Act extended its protections beyond the employer-employee context.

Ruling. The Court declined to disturb the prior rulings, holding that the only remaining issue to be resolved is whether defendants' conduct actually violated Rule 21F-17. Defendants had entered into agreements with investors that expressly prohibited "communications with any regulatory agencies, such as the United States Securities and Exchange Commission ..." and, in at least one instance, sued an investor for breaching this confidentiality clause. The Court held that such actions were undoubtedly "actions to impede" prohibited by Rule 21F-17, and granted summary judgment in favor of the SEC.

Implications. The SEC's successful enforcement of Rule 21F-17 should serve as a reminder that companies must ensure that their agreements and confidentiality provisions include clear carve-outs allowing whistleblowing to the SEC and other regulatory agencies.

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