

Securities Regulation Daily Wrap Up,WHISTLEBLOWER NEWS—Severance agreements illegally waived rights to whistleblower claims,(Aug. 16, 2016)

By [John M. Jascob, J.D., LL.M.](#)

A California-based health care insurance provider has agreed to pay \$340,000 to settle charges that the company illegally made severance benefits contingent upon employees waiving their rights to obtain monetary awards under the SEC's whistleblower program. Without admitting or denying the charges, Health Net, Inc. agreed to a cease-and-desist order finding that the waiver clauses impeded employees from communicating directly with the Commission staff about possible securities law violations, thereby violating Exchange Act Rule 21F-17 (*In the Matter of Health Net, Inc.*, [Release No. 34-78590](#), August 16, 2016).

Waiver of whistleblower claims. Prior to August 2011, Health Net's severance agreements included language that listed various potential claims against the company that a departing employee waived as a condition of receiving monetary severance payments and other voluntary consideration. In August 2011, the SEC adopted Rule 21F-17, which implemented provisions of the Dodd-Frank Act by prohibiting employers from taking actions to impede the reporting of federal securities law violations to the SEC. Although Health Net amended the agreements to specify that former employees were not prohibited from participating in government investigations, the amended waiver and release still prohibited them from filing an application for, or accepting, a whistleblower award from the SEC. Approximately 600 Health Net employees signed the agreements, which were used by the company from approximately August 2011 to June 2013.

As part of a regular periodic review and update of its agreements, Health Net removed the SEC-specific language from its severance agreements in June 2013, but retained restrictive language that removed the financial incentive for reporting information until

finally amending the agreements to strike all such restrictive language in 2015. The Commission found that Health Net's use of both the 2011 and 2013 agreements was in violation of Rule 21F-17 because the agreements directly targeted the SEC's whistleblower program by removing important incentives intended to encourage the reporting of violations.

"Financial incentives in the form of whistleblower awards, as Congress recognized, are integral to promoting whistleblowing to the Commission," said Associate Director Antonia Chion of the SEC's Enforcement Division in a [news release](#). "Health Net used its severance agreements with departing employees to strip away those financial incentives, directly targeting the Commission's whistleblower program."

In addition to the fine, Health Net agreed to make reasonable efforts to inform former employees who signed the severance agreements at issue that the company does not prohibit them from seeking a whistleblower award from the SEC under Exchange Act Section 21F.

The release is [No. 34-78590](#).

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