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## Whistleblower and Non-Retaliation Policy and Report Handling Procedures

### PURPOSE

This Policy is intended to (i) facilitate staff and Board member reporting of suspected or actual wrongdoing relating to the activities of the MSRB, its Board of Directors (“Board”) and/or staff, and (ii) set out guidance on receipt and treatment of reports to ensure that they are promptly and efficiently handled.

### SCOPE

This Policy applies to all staff and Board members.

### POLICY

It is the MSRB’s policy to maintain an environment that promotes open communication and encourages staff and Board members to voice concerns and report **Suspected Wrongdoing** without fear of retaliation. All reports of Suspected Wrongdoing made under this Policy will be taken seriously and addressed promptly.

“**Suspected Wrongdoing**” includes:

- questionable accounting (including budgeting and cash management), internal controls or auditing, or financial fraud relating to the MSRB (“**Suspected Financial Wrongdoing**”), such as:
  - fraud or deliberate error in the preparation, evaluation, review or audit of financial statements
  - fraud or deliberate error in recording and maintaining financial records
  - non-compliance with internal controls for financial reporting
  - misrepresentation to or withholding material information from the MSRB’s auditors
  - embezzlement of funds
- violation of law or regulation
- violation by staff or a Board member of an MSRB policy, including the Code of Ethics and Business Conduct, such as the following (which also may be violations of law):
  - job discrimination based on race, religion, sex, national origin, age, disability or other protected class/status
  - engaging in physically threatening conduct or sexual harassment
  - theft of company property
  - accepting a bribe
- other misconduct in connection with MSRB activities

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***Cooperation; Obligation to Report***

Each staff member and each Board member:

- **is required to cooperate with any investigation conducted under this Policy;** and
- **has an obligation to report Suspected Wrongdoing**
  - Staff can report Suspected Wrongdoing by discussing it with their supervisor or, if preferred, with the Director of Internal Audit, the General Counsel or any other member of senior management
    - These staff members may be excellent resources regarding concerns, and voicing concerns to one of them may lead to their direct resolution
    - These staff members must promptly address and/or escalate the reported Suspected Wrongdoing
  - If staff prefers, or believes concerns discussed with a person(s) above were not resolved, staff can report Suspected Wrongdoing in other ways described below in Section 1 (“*Whistleblower Reports by Staff*”) under “Procedures.” Discussing Suspected Wrongdoing first with a supervisor or other staff mentioned above is not required before reporting in these other ways.

Staff and Board members are protected when making a good faith report of Suspected Wrongdoing even if the report is not substantiated or is incorrect. Staff and Board members should have reasonable grounds for believing the information reported indicates Suspected Wrongdoing.

Any staff member or Board member who intentionally makes a false or misleading report of Suspected Wrongdoing will be subject to discipline, up to and including termination of employment or removal from the Board.

***No Retaliation***

No staff member or Board member who in good faith reports Suspected Wrongdoing, or who takes part in or cooperates with an investigation of Suspected Wrongdoing, shall be subject to retaliation (such as poor work assignments, negative performance reviews, compensation reductions, demotion or employment termination), harassment or any other adverse action because of such report, participation or cooperation.

Any staff member or Board member who (i) retaliates against any person who reports Suspected Wrongdoing in good faith or against any person who took part in or cooperated with an investigation of Suspected Wrongdoing or (ii) improperly discloses the identity of any reporting person may be subject to discipline, up to and including termination of employment or removal from the Board. Any person who feels that they have experienced retaliation, harassment or other adverse action because of their report should immediately contact their supervisor or report this using a way set out in Sections 1 or 2 of the Procedures below.

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***Confidentiality***

Reports, investigations and the reporting person's identity will be kept confidential to the extent possible, consistent with the need to adequately investigate, escalate or address the reported Suspected Wrongdoing.

**PROCEDURES**

***1. Whistleblower Reports by Staff***

The MSRB recognizes that employees may not always feel comfortable discussing concerns with a supervisor or senior management. To enable staff to report Suspected Wrongdoing in a way with which they are more comfortable, the MSRB provides other ways to report:

- **MSRB Hotline.** The MSRB contracts with a third-party service provider for the MSRB Hotline, which provides for anonymous or non-anonymous reporting by staff and Board members by telephone at **(844) 348-1577** and web intake site at <https://secure.ethicspoint.com/domain/media/en/gui/81598/index.html>.<sup>1</sup> The Service Provider forwards all reports to the MSRB staff Intake Personnel (described below). Note that it is particularly important that anonymous reports be as detailed as possible, since the MSRB cannot directly seek additional information from the Whistleblower.
- **Staff Intake Personnel.** Management designates two or more staff members as Intake Personnel to receive Whistleblower Reports from staff. Their names are on the MSRB's intranet.<sup>2</sup> Staff may contact one or all of them.
- **Email.** Reports can be made by email to:
  - the MSRB's Director of Internal Audit at [MSRBDirectorIA@msrb.org](mailto:MSRBDirectorIA@msrb.org);
  - the MSRB's General Counsel at [MSRBGenCounsel@msrb.org](mailto:MSRBGenCounsel@msrb.org); or
  - the Board Chair at [MSRBChair@msrb.org](mailto:MSRBChair@msrb.org).
- **Mail.** Reports can be made by U.S. mail or overnight courier to any of the persons above or the Chair of the Audit and Risk Committee.

A person who receives a report as described in Section 1 above (the "**Recipient**") must notify the Chair of the Audit and Risk Committee as soon as possible of the Whistleblower Report (except as set forth in the following paragraph).<sup>3</sup> Recipients will provide prompt acknowledgement of

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<sup>1</sup> The MSRB Hotline also facilitates receiving reports of wrongdoing from the public. Access to the MSRB Hotline by the public may be limited solely to the hotline telephone number, and not web access.

<sup>2</sup> As of July 20, 2023, the Intake Personnel were Sally Klemperer and Ron Smith.

<sup>3</sup> Nothing in this Policy will be interpreted to mean that a Recipient may not also make the Chair of the Board, Chief Executive Officer, General Counsel and/or Director of Internal Audit aware of the report, including its contents, provided that such person is not a Subject Person as discussed in Section 3.

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receipt if the Whistleblower provided contact information, so that the Whistleblower knows the report was received.

If the Recipient believes a Whistleblower Report involves matters that patently are not covered by this Policy, the Recipient may contact the Director of Internal Audit, and briefly explain (orally or in writing) why the matter is believed to be out of scope.<sup>4</sup> If the Director of Internal Audit, in consultation with the General Counsel, determines that the Whistleblower Report does involve matters that patently are not covered by this Policy, the Director of Internal Audit will (a) document the basis for that conclusion in reasonable detail and maintain such written record as described in the “*Recordkeeping*” section below, (b) email the basis/conclusion to the Chair of the Audit and Risk Committee, and (c) contact other staff as appropriate to follow up on the matters. If the Director of Internal Audit determines that the alleged wrongdoing is not patently out of this Policy’s scope, the Director of Internal Audit will inform the Recipient and then the Recipient will proceed with notifying the Chair of the Audit and Risk Committee of the Whistleblower Report as soon as possible.

## **2. Whistleblower Reports by Board Members; Audit Committee Chair Notification to Others**

Board members should report Suspected Wrongdoing in writing directly to the Chair of the Audit and Risk Committee or may report anonymously through the MSRB Hotline (described above).

The Chair of the Audit and Risk Committee will promptly (subject to the “Notification Considerations” below) notify the Chair of the Board, Chief Executive Officer, Director of Internal Audit and General Counsel in writing of any Whistleblower Report received initially by the Chair of the Audit and Risk Committee directly from Board members or others.<sup>5</sup>

## **3. Notification Considerations**

If, per this Policy, a person is to be forwarded or receive a Whistleblower Report or is to be notified of a Whistleblower Report but that person is named in it as being involved with the Suspected Wrongdoing or otherwise appears to be personally affected in some way (the “**Subject Person**”), then the Report or notification will be withheld from the Subject Person and instead will be provided only to the other people as specified in this Policy. Further, (i) if the Chair of the Audit and Risk Committee is the Subject Person, then the Chair of the Board instead will be the recipient/substitute for this Policy, (ii) if the Chair of the Board is the Subject Person, then the Vice Chair of the Board instead will be the recipient/substitute and (iii) if the Director of Internal Audit is the Subject Person, then the General Counsel instead will be the

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<sup>4</sup> Examples of an out-of-scope matter are (i) a report alleging misconduct by *an MSRB registrant* or (ii) a report that *a person who is not a Board member or a staff member* is writing false checks that purport to be from/signed by the MSRB, since this Policy covers misconduct by staff or Board members.

<sup>5</sup> Examples include not only Whistleblower Reports made by staff directly to the Chair of the Audit and Risk Committee, but also reports of Suspected Wrongdoing made by the public.

recipient/substitute for Section 5 of this Policy.

#### **4. Useful Information to Report**

A Whistleblower may want to provide the following information in a Whistleblower Report:

- the name(s) of the person(s) involved in the Suspected Wrongdoing
- the date or (estimated) time-period of the Suspected Wrongdoing
- the nature of the concern/a description of the action or inaction that is Suspected Wrongdoing
- how the Whistleblower learned of the Suspected Wrongdoing
- possible witnesses
- any other information, documentation, etc. the Whistleblower has that supports the report

It is helpful if a Whistleblower provides as much detail as possible.

#### **5. Preliminary Analysis and Investigation**

The Chair of the Audit and Risk Committee may request that the Director of Internal Audit, in coordination with the General Counsel, provide a preliminary analysis of the Whistleblower Report, which may include an assessment of potential materiality of the alleged wrongdoing and/or the type of Suspected Wrongdoing. Based on their analysis, the Director of Internal Audit and General Counsel will recommend next steps, which may include an investigation.

The Audit and Risk Committee is responsible for the oversight of investigation of Whistleblower Reports. For conducting an investigation, the Committee may take any of the following approaches:

- the Audit and Risk Committee itself may investigate
- the Audit and Risk Committee may appoint a subcommittee of the Audit and Risk Committee to investigate
- the Audit and Risk Committee may request that the Chair of the Board appoint an ad hoc committee of the Board to investigate
- the Audit and Risk Committee may request that the Director of Internal Audit investigate in coordination with the General Counsel
- the Audit and Risk Committee may request that the General Counsel investigate

In determining which approach to use, the Audit and Risk Committee should consider (without limitation) (i) the materiality or severity of the Suspected Wrongdoing, (ii) the identity of the alleged wrongdoer(s) and (iii) whether the Suspected Wrongdoing may materially affect the financial statements or the MSRB's financial condition so that it would be more appropriate for the Audit and Risk Committee itself or an ad hoc committee of the Board to investigate.

The Chair of the Audit and Risk Committee shall promptly communicate any Suspected

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Financial Wrongdoing to the MSRB's independent financial statement auditor and Chief Financial Officer.

The investigators of the Whistleblower Report (hereinafter, "**Investigators**") may consult with any staff that they believe has expertise or information to assist them. In their discretion, the Investigators may engage outside auditors, counsel or other experts to assist in the investigation, including analysis of results. The Investigators will periodically report on the investigation to the Chair of the Audit and Risk Committee and the Chair of the Board (subject to the "*Notification Considerations*" above).

A non-anonymous Whistleblower likely will want to know that the Whistleblower Report is being handled promptly and appropriately. However, there are considerations regarding whether to provide status reports, such as protecting the integrity of the investigation and the privacy of those involved and not prematurely relaying inaccurate or incomplete information. The Audit and Risk Committee, in consultation with the Director of Internal Audit and the General Counsel, will determine whether to provide status reports to the Whistleblower and, if to be provided, their form and content.

#### **6. Resolution and Reporting to the Board**

The Investigators will present their findings and recommendations to the Audit and Risk Committee. The Audit and Risk Committee will vote on whether to adopt any recommendations, which may include a corrective action plan. The Audit and Risk Committee may request that the Director of Internal Audit, in coordination with the General Counsel, communicate in writing to the Whistleblower and/or to the subjects of the investigation that the investigation is complete; provided that the Committee may determine not to disclose information about the findings of the investigation and/or corrective actions.

The Director of Internal Audit will report periodically, or upon request, to the Audit and Risk Committee on the implementation of any corrective action plan until it is fully implemented.

#### **7. Recordkeeping**

Upon completion of any investigation, the Chair of the Audit and Risk Committee and the Investigators will provide all records of the investigation to the Director of Internal Audit to maintain in accordance with the MSRB's records management policy.<sup>6</sup> The Director of Internal Audit will maintain them in a separate file marked as confidential.

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<sup>6</sup> For the avoidance of doubt, (i) Committee votes and the transaction of business by the Audit and Risk Committee will be reflected in its minutes and/or written consents (as is provided for in its charter) and retained pursuant to its normal practices for minutes or written consents and (ii) information in the MSRB Hotline service provider platform may be retained there pursuant to the MSRB's normal practices for such information in third-party platforms.

## DEFINITIONS

- **Whistleblower:** A staff member or Board member who reports Suspected Wrongdoing in one of the ways set out in Section 1 (*Whistleblower Reports by Staff*) or Section 2 (*Whistleblower Reports by Board Members*) under “Procedures” above.
- **Whistleblower Report:** A report by a Whistleblower made in one of the ways set out in Section 1 (*Whistleblower Reports by Staff*) or Section 2 (*Whistleblower Reports by Board Members*) under “Procedures” above.

## RESPONSIBILITIES

- **Staff and Board Members**
  - Report any Suspected Wrongdoing
  - Cooperate with any investigation conducted under this Policy
- **Audit and Risk Committee**
  - Oversee investigations conducted under this Policy
- **Director of Internal Audit**
  - If requested by the Chair of the Audit and Risk Committee, provide preliminary analysis of Whistleblower Reports in coordination with the General Counsel
  - If requested by the Audit and Risk Committee, investigate Whistleblower Reports in coordination with the General Counsel
  - Maintain records of Whistleblower Report investigations
- **General Counsel**
  - Support the Director of Internal Audit by providing legal analysis in connection with the analysis and investigation of Whistleblower Reports
  - If requested by the Audit and Risk Committee, investigate Whistleblower Reports

## EXCEPTIONS

Only the Chair of the Audit and Risk Committee or the Chair of the Board may grant any request for a waiver of this Policy. In general, waivers will not be granted.