NWC | NATIONAL WHISTLEBLOWER CENTER
1875 Connecticut Avenue, NW, 10th Floor, Washington, D.C. 20009 | www.whistleblowers.org

October 18, 2019

Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: File Number S7-16-18

Dear Chairman Clayton and Members of the Commission:

Thank you for the opportunity to comment on the Securities and Exchange Commission (SEC) proposed rule changes regarding the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We are writing today to comment specifically on the proposed amendments to Rule 21F-6 and Rule 21F-9(e). This letter supplements the comment letters we submitted on September 17 and 18, 2018, December 14, 2018, and October 3, 2019, and incorporates by reference the letters sent by the firm Kohn, Kohn & Colapinto on July 24, 2018, May 6, 2019, September 12, 2019, October 8, 2019, and October 16, 2019.

We strongly oppose the proposed Rule 21F-6 amendment as written. The plain language and legislative intent of the Dodd-Frank Act is focused on creating incentives for whistleblowers to report fraud. There is nothing in the Dodd-Frank Act that implies any intention to give SEC the discretion to cap rewards as proposed here. In fact, Congress spoke plainly on the issue of caps by setting a statutory cap at 30%. The SEC's proposal to give itself discretion to reduce any reward that would exceed $30 million is contrary to this clear legislative language and would undermine Congress's intent to incentivize whistleblowing. As Congress has recognized in rejecting discretionary caps in other contexts, such caps discourage whistleblowers from bringing forward major fraud cases. To ensure the continued success of its whistleblower program, SEC must abandon the idea of discretionary caps and continue following Congress's directive to set whistleblower rewards based on the quality of the information provided by the whistleblower and the whistleblower's contribution to a successful prosecution.

We likewise strongly oppose the Rule 21F-9(e) amendment as written. Nothing in the language or intent of the Dodd-Frank suggests that it would be appropriate to bar whistleblowers from recovery simply because they informed the SEC of fraud prior to filing a formal complaint (TCR). In fact, the SEC whistleblower program has had great success by encouraging reporting to the SEC in a variety of ways, including through web pages that encourage directly contacting of investigators. Although we agree with the SEC on the importance of the TCR, the objective of getting whistleblowers to complete this form can be achieved without arbitrarily disqualifying whistleblowers simply because their first communication with the SEC was not through the TCR. Such an arbitrary method of disqualification could eliminate large number of otherwise qualified whistleblowers from the rewards program, thus sending a strong message of hostility to whistleblowers. This is the opposite of what the SEC should be doing to ensure the continued success of its program and it would undermine Congress's intent to incentivize whistleblowers.

Whistleblowers have helped the SEC recover over $1.7 billion in sanctions from wrongdoers over the past decade. We urge you not to undermine the success of one of the best whistleblower programs in the country as well as one of the most effective checks on corporate fraud. Please reconsider these ill-advised proposed amendments.

Thank you for your consideration. Please feel free to contact us at your convenience by email at info@whistleblowers.org or by phone at 202-342-1903.

Sincerely,

John Kostyack
Executive Director
National Whistleblower Center