

November 22, 2010

Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2736

Dear Chairman Schapiro:

On behalf of the National Whistleblower Center we are expressing our deepest concern that the "Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934," (hereinafter "Proposed Rules"), unlawfully restrict whistleblower disclosures designed to protect innocent investors from illegal and unethical market manipulations and fraud.

As currently drafted, the Proposed Rules signal to Wall Street that the SEC is more sympathetic to companies that violate the law than to employees who risk their careers, reputations and jobs to report wrongdoing.

As set forth in the Commission's published discussion regarding the actual real-world impact of its rules, the Commission conceded their rules:

- * ***"would limit the pool of eligible whistleblowers and thereby reduce the number of potentially useful informants"*** Proposed Rule, p. 112;
- * ***"discourage potential whistleblowers from coming forward" by "heightening the standards for eligibility"*** Proposed Rule, p. 117;
- * ***"discourage some whistleblowers from submitting potentially useful information"*** Proposed Rule, p. 118;
- * ***"result in instances in which the Commission does not receive important information regarding potential violations"*** Proposed Rule 118;
- * ***"cause those persons not to come forward with information in their possession about securities law violations."*** Proposed Rule, p. 118;
- * ***"result in . . . forgone opportunities for effective enforcement action."*** Proposed Rule, p. 118.

The Commission also acknowledged that the procedures proposed for filing whistleblower complaints would be ***"burdensome and confusing"*** (Proposed Rule, p. 116) and likewise failed to incorporate into its proposal substantive recommendations made by the SEC's Inspector General. *See*, Office of Inspector


General, "Assessment of the SEC's Bounty Program," Report No. 474 (March 29, 2010).

We are also disappointed that the Commission took no steps to use the rule making process to ensure that that regulated community comply with the anti-retaliation provisions of the Dodd-Frank Act (or the Sarbanes-Oxley Act)¹ or to mandate that corporate compliance programs actually operate in an honest, ethical and effective manner.² The rules violate explicit statutory provisions in Dodd-Frank and also violate the statutory mandate that the rules be "user-friendly." *See* § 21F(d)(1).

The goal of the law is not to create procedural hurdles and substantive exclusions that will result in the non-payment of claims. The goal of the law is to pay rewards to meritorious whistleblowers. Only in this manner will the deep-rooted cultural bias against whistleblowers be mitigated and employees will actually be encouraged to report wrongdoing. Each time a whistleblower is financially rewarded Wall Street will be reminded that playing by the rules is in their own self-interest. They will be motivated to undertake renewed efforts to ensure compliance. The reward process itself will, over time (and if properly implemented), create a significant deterrent effect on fraud and misconduct within the regulated community. However, if whistleblowers are denied rewards based on the SEC-created procedural hurdles and SEC-created substantive exclusions, the Dodd-Frank Act will, in practice, have the exact opposite effect. The law will be viewed cynically. Employees will continue to believe that whistleblowers are losers – and that it is a career-ending mistake to expose wrongdoing.

We implore your Commission, in the strongest possible terms, to reverse its current course, withdraw the Proposed Rules, and re-publish a proposal that does not violate the statutory mandates of Dodd-Frank. The revised Proposed Rules must be "user-friendly," and actually protect and encourage whistleblowers. Most of all, revised Proposed Rules *cannot* contain any provisions that reduce the level of protection set forth by Congress and *cannot* create "exclusions" that will "limit the pool of eligible whistleblowers," "discourage whistleblowers from submitting useful information" or "result in . . . forgone opportunities for effective enforcement."

Respectfully submitted,


Stephen M. Kohn
Executive Director


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Director of Advocacy and Development

CC: Commissioners, Securities and Exchange Commission
Commissioners, Commodities Futures Trading Commission

¹ *See, e.g.* 10 C.F.R. § 50.7 (example of agency using the rule making process to ensure that industry protect whistleblowers in regulatory proceedings).

² *See, e.g.* 48 C.F.R. ch. 1 and 48 C.F.R. Subpart 3.900.