



**Speech by SEC Commissioner:
Opening Statement — May 25, 2011 Open Meeting —
Final Rules for Implementing the Whistleblower
Provisions of Section 21F of the Securities Exchange Act
of 1934**

by

Commissioner Elisse B. Walter

U.S. Securities and Exchange Commission

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I too would like to thank the staff for their long, hard, thoughtful and productive work relating to the recommendations before us today. You have gone to great lengths to consider carefully and address the important issues raised by the final rules and forms relating to our new whistleblower program, and especially the questions, comments, and concerns that each of us on the Commission has had about the program, as well as those expressed through the numerous comment letters on the proposals.

I would also like to welcome Sean McKessy back to the Commission's staff. Sean, you will play a critical role in our enforcement program going forward. We are fortunate that you were willing to return.

I know that this project has not been easy, and each of us, on the staff and the Commission, has worked hard to find the right balance on the particularly important policy considerations presented by the whistleblower provisions of the Dodd Frank Act. I have very much appreciated the extensive public involvement in the rulemaking process, and believe that the recommendations presented to us today are much better as a result. In my view, this applies especially with respect to two policy considerations I believe are particularly important, which I raised in my remarks last year on the whistleblower proposals. As have the staff, my colleagues on the Commission, and many others, I have wrestled with these issues and given them a great deal of thought and time.

The first policy consideration relates to the importance of ensuring that our whistleblower program does not undercut existing and effective company compliance and other internal processes for responding to violations of the federal securities laws. I continue to believe that these processes are quite important and that they must remain robust, and in fact improve, in order to best protect our nation's investors.

Of particular interest to many has been whether whistleblowers should report through internal compliance processes as a prerequisite to eligibility for a whistleblower award. After careful consideration, the staff is not recommending that we adopt such a requirement. I agree with the staff's recommendation. I reached this conclusion after long consultation with both the staff and many outside parties on both sides of the issue. And, I reached it after much thought and consideration regarding the purpose of the whistleblower program and the language adopted by Congress in directing that we implement the program. If we want our whistleblower program to work, we must encourage potential sources of information to come forward. And, I believe that we cannot do so without assuring those who fear for their jobs, their livelihood and their families' welfare that they have an avenue to come directly to the government. After-the-fact relief for retaliation alone is simply not sufficient.

In addition, the proposal before us contains significant incentives for individuals to use internal compliance and reporting systems.

For example, the staff is recommending that, in determining the percentage of a whistleblower award, the individual's voluntary participation in internal compliance system will be a factor that can increase the amount of the award, while that individual's interference with such systems can decrease it. Also, the staff recommends an additional component to the definition of "led to successful enforcement" in final rule 21F-4(c), under which a whistleblower can receive an award for reporting original information to an entity's internal compliance systems, if the company in turn reports the information to the Commission.

Moreover, the staff is recommending that we increase the grace period from 90 to 120 days for whistleblowers who report potential securities law violations to the Commission after reporting them internally. The staff has also noted that it retains the discretion to ask that a company address a whistleblower complaint submitted to the Commission through its corporate internal processes. Each of these factors mitigates against any potential negative impact on corporate compliance programs.

The second policy consideration relates to whistleblowers who have participated in the wrongdoing in question, or so-called culpable whistleblowers. The Dodd-Frank Act provides that whistleblowers who are criminally convicted are ineligible; I continue to believe that our program should minimize other whistleblowers from benefitting from their own misconduct.

Although the staff does not recommend that the Commission impose a *per se* exclusion from an award, they make recommendations designed to ensure that culpable whistleblowers have incentives to come forward to the Commission while at the same time preventing them from benefitting financially from misconduct for which they are substantially responsible.

Specifically, for purposes of determining whether the \$1 million dollar threshold has been satisfied for calculating the amount of an award, the staff recommends that we count neither monetary sanctions culpable whistleblowers are ordered to pay, nor those ordered against any entity whose liability is based substantially on conduct the whistleblower directed, planned, or initiated. They also recommend that we include a provision in final rule 21F-6 requiring the Commission to consider whether it would be appropriate to decrease a whistleblower's award percentage because of his or her culpability as well as any unreasonable reporting delays.

I support the staff recommendations today. I appreciate the careful balance struck by these recommendations, and their adherence to the statutory language and purpose.

I would like to emphasize, however, that I do not believe that our action here today means that our work is done in this area. In fact, it is more of a beginning. The Commission and its staff must remain open to improving the whistleblower program as we implement it, and I strongly encourage feedback from all involved as this occurs.

Thank you.

<http://www.sec.gov/news/speech/2011/spch052511ebw-item2.htm>