U.S. Securities and Exchange Commission

Speech by SEC Chairman: Opening Statement at SEC Open Meeting: Item 2 — Whistleblower Program

by

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Next, we will consider whether to adopt rules to create a whistleblower program that would incentivize those close to a fraud to come forward and provide information to the Commission. These rules, originally proposed last November, would implement Section 922 of the Dodd-Frank Act.

The new whistleblower program is a part of our effort to enhance the agency's capacity to detect and prevent fraud. Today's proposed final rules build upon our efforts over the past two years and our experience with the Sarbanes-Oxley Act — an Act that made great strides in creating whistleblower protections and requiring internal reporting systems at public companies. From that experience, we learned that despite Sarbanes-Oxley, too many people remain silent in the face of fraud. Today's rules are intended to break the silence of those who see a wrong.

For an agency with limited resources like the SEC, I believe it is critical to be able to leverage the resources of people who may have first-hand information about potential violations. And, it is especially important to investors whose savings or retirement funds may hinge on our ability to stop an ongoing fraud or obtain hidden evidence.

Already, the whistleblower provision of the Dodd-Frank Act is having an impact. While the SEC has a history of receiving a high volume of tips and complaints, the quality of the tips we have received has been better since Section 922 became law. And we expect this trend to continue.

Today's proposed final rules map out simplified and transparent procedures for whistleblowers to provide us critical information. To a great extent, the procedures work in tandem with the new online system we established to collect tips and complaints across the agency.

Not surprisingly, this rulemaking process brought to light several challenging policy issues — issues that were raised in the 240 comments and more than 1,300 form letters we received. The recommendation before us today is a result of the careful weighing of the comments which improved upon the earlier rules we proposed.

Categories of Persons: For example, the proposed rules limited the ability of lawyers, auditors and internal compliance personnel to improperly use their positions to claim a reward. Today's final rule recognizes that we might have initially sought to exclude too many important, potential whistleblowers. So, the proposal narrows some of those exclusions and, more importantly, creates appropriate exceptions to ensure sufficient avenues for vital information ultimately to get to the SEC.

Simpler Procedure: Similarly, we agreed with those who advocated for a simpler, more streamlined procedure for submitting information. As such, the proposed final rule now includes a single form that a whistleblower can submit.

Whistleblower Protections: And, further, the final rules make clear that the statute's whistleblower protections apply to anyone who provides us information, even if that information relates to a possible securities law violation, and regardless of whether it leads to a successful enforcement action.

But, perhaps, no issue received more focus during this process than the role of internal compliance programs. As I have often said, internal compliance programs play an extremely valuable role in the fraud prevention arena. And we have sought to leverage compliance officers who can help protect investors by keeping companies on the straight path. But many commenters vigorously asserted that these programs would only

survive if the Commission required whistleblowers to first report internally before coming to us.

This view, however, was countered by many other commenters who strenuously argued that mandating internal compliance reporting is inconsistent with the statute. They noted that such a mandate would dissuade whistleblowers from coming forward.

I believe that the final recommendation strikes the correct balance — a balance between encouraging whistleblowers to pursue the route of internal compliance when appropriate — while providing them the option of heading directly to the SEC. This makes sense as well because it is the whistleblower who is in the best position to know which route is best to pursue.

Nevertheless, these final rules expand upon the incentives for whistleblowers to report internally where appropriate to do so.

- First, the final rules lengthen the period of time in which a whistleblower can wait before coming to the SEC, after reporting internally. Now whistleblowers will be able to get credit for the original date they reported to their company so long as they notify the SEC within 120 days.

- Second, the final rules now make clear that the Commission — when considering the amount of an award — will consider how much a whistleblower has participated in or interfered with the internal compliance process.

- Perhaps most significantly, the final rules would give credit to a whistleblower whose company passes the information along to the Commission, even if the whistleblower does not. This could create an opportunity for a whistleblower to obtain an award through internal reporting where the whistleblower might not otherwise have qualified for an award because the information was not sufficiently specific and credible.

Offering financial incentives for whistleblowers to report appropriate concerns to internal compliance is unprecedented.

But, I believe that incentivizing — rather than requiring — internal reporting is more likely to encourage a strong internal compliance culture. Our rules create incentives for people to report misconduct to their employers, but only if those companies have created an environment where employees feel comfortable that management will take them seriously — and where they are free from possible retaliation.

Finally, in deciding upon the appropriate amount of an award, the rule indicates that the Commission will focus on the timeliness and quality of a whistleblower's assistance. Already, I have heard stories from our investigators about how whistleblowers have saved us weeks of investigation time because of the specific, credible and timely information they provided.

Before I close, I'd like to recognize the hard work of the staff, of which I am very proud. From the outset, this team has been extremely thoughtful about the difficult policy choices created by these rules. I believe the staff's recommendation strikes an appropriate balance between the need to encourage whistleblowers to come forward and the risk of promoting unintended consequences. From day one, this effort has been a true partnership between the Division of Enforcement and the Office of General Counsel, and the support from the Division of Risk, Strategy and Financial Innovation has been extremely valuable as well.

I would like to thank the staff of the Division of Enforcement, specifically Rob Khuzami, David Bergers, Stephen Cohen, Tom Sporkin, Jordan Thomas, Sarit Klein, Sam Waldon, Laurita Finch, Howard Scheck, Charles Wright, Megan Alcorn, and, of course, the Chief of our new Office of the Whistleblower, Sean McKessy.

From the Office of the General Counsel, I would like to thank Mark Cahn, Rich Levine, Brian Ochs, Brooks Shirey, Stephen Jung, Tom Karr and Bill Lenox.

I also would like to thank the Division of Risk, Strategy, and Financial Innovation, specifically Jonathan Sokobin, Scott Baugess, Alex Lee and Matt Reed for their contributions and collaborative efforts.

Finally, I would like to thank the other Commissioners and all of our counsels for their collaborative work and comments, which greatly enhanced this rule.

Now I'll turn the meeting over to Rob Khuzami, Director of the Division of Enforcement.

http://www.sec.gov/news/speech/2011/spch052511mls-item2.htm

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