



**AMERICAN
ASSOCIATION
OF BANK DIRECTORS**

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December 17, 2010

By Email rule-comments@sec.gov
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number S7-33-10

Dear Ms. Murphy:

The proposed rules for implementing the whistleblowing provisions of Section 21F of the Securities Exchange Act reflect a good faith effort by the SEC to reconcile that provision with its long-standing goal of supporting corporate compliance programs. But despite its efforts, it is confronting a fundamental conflict that cannot be fully resolved without a repeal of Section 21F.

A key element of any robust compliance system is reliance on employees who suspect or discover improper behavior to report it to the Audit Committee or other reporting bodies within the company so that prompt review and necessary corrective action is taken on a timely basis. Yet, Section 21F tempts employees to bypass the corporate compliance processes by offering them significant bounties.

Many of our members, most of whom are outside directors of banks, savings institutions, and their holding companies, were empowered by the provisions of Section 301 of the Sarbanes-Oxley Act, which requires audit committees of publicly reporting companies to adopt procedures for the receipt of complaints regarding accounting, internal accounting controls, or auditing matters, and the confidential anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters. Section 21F undermines Section 301 and the effectiveness of the authority of the Audit Committee and other board committees assigned the task of establishing and monitoring the company's compliance systems.

Certain changes could be made in the proposed regulations that will help preserve some of the authority that the Board of Directors and its committees have over the compliance systems in their companies. These include barring any employee from being considered a whistleblower or from being deemed to provide original information unless the employee reports all of the information that is being provided to the SEC to the Audit Committee of the company at the same time or prior to filing the information with the SEC. In addition, the SEC should assure

that the information it receives from the purported whistleblower is made available to the company contemporaneously.

The Congress has created a dual loyalty for every employee of every company in the U.S. (Section 21F can also apply to private companies). Employees have a legal duty to serve the best interests of the company they work for and the company's shareholders, but now they have been deputized and promised huge riches to bypass their companies and report to the government.

The SEC must speak out and request the new Congress to repeal Section 21F as soon as possible.

Sincerely,

DAVID BARIS
(Electronic Signature)

David Baris
Executive Director