

MEMORANDUM

To: File No. DF-Title IX Whistleblower

From: Stephen Cohen
Senior Advisor to the Chairman

Date: September 28, 2010

Re: Meeting with Stuart D. Meissner

On September 23, 2010, I met with Stuart D. Meissner of Stuart D. Meissner LLC along with the following representatives of the SEC: Tom Sporkin, Sarit Klein and Jordan Thomas from the Division of Enforcement, and Brian Ochs and Tom Karr from the Office of General Counsel. Mr. Meissner discussed his recent experience submitting tips to the SEC on behalf of individuals who intend to claim whistleblower status under Section 21F of the Securities Exchange Act of 1934 and expressed his views about the importance of improving how the SEC communicates with whistleblowers and their counsel. We also discussed several specific aspects of the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the upcoming rulemaking. Those specific areas of discussion are contained in the attached agenda. At this meeting, Mr. Meissner also provided staff with the following documents: Copy of a FINRA Award supporting his concern about the use of confidentiality language in FINRA arbitrations as a deterrent to whistleblowers; a Boston Globe article dated Sept 2, 2010; and a Sept 1, 2010 Whistleblower Submission he made on behalf of a client.

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AGENDA

Dodd–Frank Wall Street Reform and Consumer Protection Act, §21 F Whistleblower Provision

MEETING WITH STEPHEN L. COHEN ESQ.
SENIOR ADVISOR TO THE CHAIRMAN

Stuart D. Meissner, Esq.

September 23, 2010

AGENDA FOR STUART D. MEISSNER ESQ. MEETING WITH STEPHEN L. COHEN ESQ. SEC IMPLEMENTATION OF SECTION 21F WHISTLEBLOWER PROVISIONS OF THE DODD FRANK ACT (“Act”)

- 1) Privacy and Anonymity of Whistleblowers and Submissions
 - a. Freedom of Information Act Requests
 - b. Guidance Regarding Post Award Disclosure to SEC of Whistleblower Identity
 - c. Limitations on SEC Employees Post Gov't Employment with Whistleblower Related Entities
 - d. Limitations internally as to who has access to whistleblower data base, whether or not anonymous

- 2) Under section (j) of the Act Encourage FINRA, which the SEC oversees, to establish Conduct and Arbitration rules to encourage submissions and compliance with the purpose of the Act consistent with subsection (h) of the Act “Protection of Whistleblowers”
 - a. Encourage FINRA, which the SEC oversees, to establish Conduct rules protecting member firm employees who avail themselves of the new Dodd Frank Act and prohibiting member firms or their agents or attorneys from seeking to expose such Whistleblowers, either through Freedom of Information Act requests or otherwise
 - b. Encourage FINRA to establish Conduct rule prohibiting retaliatory conduct or threats against employees or former employees of member firms “directly or indirectly”.
 - c. Encourage FINRA to establish Conduct rules prohibiting settlement agreements with customers or employees that in any way inhibit, obstruct, delay or discourage submissions to the SEC pursuant to the Act “directly or indirectly”.
 - d. Encourage FINRA to establish Arbitration Rules prohibiting FINRA arbitrators from issuing any order which, in any way, inhibits or obstructs any party from making submissions to the SEC pursuant to the Act during or after any arbitration proceeding “directly or indirectly” through the issuance of confidentiality orders, gag orders or otherwise. Such should deem any such order to be deemed null and void.

- e. Encourage FINRA Enforcement to establish conduct rules which prohibit member firms from “directly or indirectly” seeking any order from any arbitration panel or Court which would in any way obstruct, delay or discourage a customer or employee from making submissions pursuant to the Act. Deem any such attempt to even seek such an order a violation of the Code of Conduct subject to immediate disciplinary proceedings by FINRA Enforcement.
 - f. Encourage FINRA to permit registered representatives to choose to file an action in Court or in FINRA arbitration for violations of the Act and seek the remedies afforded by the Act in either forum.
 - g. Encourage FINRA to make clear via a Conduct rule that no member firm may place in any customer or employment contract any waiver of the rights and protections provided under the act and deem any such provision a violation of the Code of Conduct subject to disciplinary proceedings and deemed unenforceable
- 3) Rules permitting the SEC to provide immunity from SEC actions against the Whistleblower as a result of their Whistleblowing
- 4) Provide Guidance regarding the awarding of the 10-30% range
- a. Ranging from initial submission, provision of back-up ie tapes/transcripts, documents, assistance with subpoena drafting, reviewing documents obtained etc, willingness to testify, etc.
 - b. Determine how the SEC shall handle a matter where there is more than one Whistleblower with regard to the payment of the award.
 - c. Keep in mind potential conflicts of counsel representing separate whistleblowers regarding the same matter
- 5) Submission Mechanism
- a. Web Site
 - i. Create Form Specific to the Statute
 - ii. Tailor Submission form to the Anonymous provisions of the statute
 - b. Immediate Confirmation of Receipt and Assignment of Number for Follow-up Submissions to the SEC
 - c. To the extent the SEC has determined it will not pursue a particular matter promptly inform the Whistleblower or their representative in writing of such and indicate whether additional evidence on the topic may alter such decision and then inform the Whistleblower or their representative whether such decision has been altered..

- i. Establish a mechanism whereby the whistleblower or their representative may respond and present additional information with respect to any decision regarding (c).
 - ii. Consider permitting a private right of action pursuant (d) (G) of the Act if the SEC chooses not to pursue a matter
- d. Record keeping of cooperation by whistleblower with other agencies SEC may refer matter to – FINRA Enforcement, FBI, US Attorney or others so that the Whistleblower obtains “credit” for such cooperation.