

MEMORANDUM

To: File No. DF-Title IX Whistleblower

From: Sarit Klein
Senior Counsel, Division of Enforcement

Date: December 17, 2010

Re: Meeting with Counsel Re: Proposed Whistleblower Rules

On December 10, 2010, I met with Julie Grohovsky (Wu, Grohovsky & Whipple), Robert L. Vogel (Vogel, Slade & Goldstein, LLP) and Emily C. Lambert (Kenney & McCafferty, PC) to discuss specific aspects of the whistleblower provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and the Commission's proposed rules. The following representatives from the SEC were also present: Thomas Sporkin, Jordan Thomas and Megan Alcorn from the Division of Enforcement, and Brian Ochs and William Shirey from the Office of the General Counsel. The specific areas discussed during the meeting are reflected in the attached agenda. In addition, the attendees indicated that they would be submitting a formal comment letter through the Commission's website.

PROPOSED AGENDA

December 10, 2010

Meeting Regarding Requested Comments To
The U. S. Securities and Exchange Commission's
Proposed Rules for a New Whistleblower Program
Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

Submitted by:

Julie Grohovsky, Wu, Grohovsky & Whipple
Rob Vogel, Vogel, Slade & Goldstein
Emily Lambert, Kenney & McCafferty

- I. To be Effective, the Proposed Rules Must Give Whistleblowers the Option of Going Forward to the Commission Without First Using Internal Compliance Processes.
- II. The 90-Day Proposed Window in Rule 21F-4(b) for a Whistleblower to Come to the Commission After First Reporting Information about Alleged Violations to a Company Compliance Program Should Be Expanded to 180 Days.
- III. The Definition of a Whistleblower in Proposed Rule 21F-2 Should Not be Modified to Expressly State that it is an Individual who Provides Information about Potential Violations of the Securities Laws "by Another Person."
- IV. The Definition of a Whistleblower in Proposed Rule 21F-2 Should Not Preclude a Government Employee Who Learns of the Securities Violation *Outside of the Scope of his or her Employment* -- e.g., in One's Capacity as a Shareholder or Customer -- from Acting as a Whistleblower.
- V. The Statutory Language "Lead to the Successful Enforcement" of an Action Should Not Be Interpreted to Require that a Whistleblower Provide Information that Both (i) Causes the Commission to Open an Investigation, *and* (ii) Significantly Contributes to the Success of the Action.
- VI. The Forms Proposed by the Commission Should Be Modified to Allow for Joint Submissions.
- VII. Proposed Rule 21F-10 Should Require the Commission, Upon Completion of an Enforcement Action, to Notify a Whistleblower of the Potential Eligibility for an Award.
- VIII. Proposed Rule 21F-8(b)(4) Should Be Modified.
- IX. Proposed Rule 21F-8(c)(7) Should Be Modified.

- X. Proposed Rule 21F-9(d)(1) Should Be Edited To Add the Requirement That Where a Whistleblower Submitted Information to the Commission After the Effective Date of Dodd-Frank but Prior to the Effective Date of the Rules and Failed to Follow the Format Specified in the Rules, the Whistleblower Should Provide That Information on Form TCR or Electronically, *and also* Submit Form WB-DEC.**
- XI. Proposed Rule 21F-11 Should Address How and When a Whistleblower Should Submit Form WB-APP Where a Final Order Has Been Entered in a Related Action, but the Commission Has Not Taken Any Final Action Yet.**
- XII. The Procedures for Determining Awards Should Encourage Open Communication and Negotiation Between a Whistleblower's Counsel and the Commission's Staff.**
- XIII. Proposed Rule 21-F Should Include Language that Allows Competing Whistleblowers an Opportunity to Participate in A Whistleblower's Appeal.**
- XIV. The Commission Should Adopt Only Those Proposed Rules That Improve The Commission's Ability to Receive and Utilize High-Quality Tips, Information and Cooperation.**