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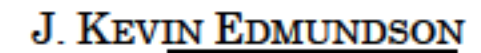

April 11, 2022

*Rule-comments@sec.gov*

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

*Re:* *File No. S7-07-22*

Dear Ms. Countryman:

In the 2020 Amendments to the whistleblower program rules, the Commission provided interpretive guidance regarding bankruptcy proceedings. The Commission stated:

> [O]ur statutory authority does not extend to paying whistleblower awards for recoveries in bankruptcy proceedings . . . . Bankruptcy proceedings are not brought by either the Commission acting under the securities laws or by one of the designated related-action authorities, and orders to pay money that result from bankruptcy proceedings are not imposed "in" Commission covered actions or related actions.

With respect to the pending proposed rules, the Commission seeks comment on Rule 21F-3(b)(3) ("related actions") and Rule 21F-6 ("discretionary award factors"). The proposed rules, however, do not directly address the Commission's interpretive guidance on bankruptcy proceedings.

The Commission should consider revising its guidance regarding bankruptcy proceedings. The guidance (a) does not conform with prior precedent and (b) ignores the realities of the path that some enforcement actions take. Further, the retroactive guidance is not consistent with the whistleblower statute or the spirit of the program.

The Commission is well aware that some fraudsters file for preemptive bankruptcy protection during an enforcement action to thwart the Commission's efforts to obtain appropriate relief in district court for violations of the federal securities laws. In those instances, the enforcement staff aggressively seeks relief in the bankruptcy court for the protection of investors. If hundreds of millions of dollars are collected in the bankruptcy process and distributed to victims of a securities fraud, the current interpretive guidance unnecessarily draws a hard line and precludes consideration of collections in bankruptcy for purposes of evaluating a whistleblower award. Such a result is wrong and discourages potential whistleblowers from coming forward with relevant information if they believe that collections in a bankruptcy proceeding will not be considered for purposes of evaluating a whistleblower award. The interpretive guidance unduly ties the hands of the Office of the Whistleblower in creating flexible solutions based on the facts and circumstances of difficult cases.

I urge the Commission to re-evaluate its interpretive guidance on collections in bankruptcy proceedings in the administrative process rather than having this issue resolved in litigation.

Respectfully,

/s/ *J. Kevin Edmundson*

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