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Via Email: rule-comments@sec.gov

Re: File Number S7-16-18

Honorable Commissioners:

On behalf of the public vulnerable to predators' fraud schemes, we, a law firm with extensive experience in SEC whistleblower actions, false claims actions and public service, write to object to the proposed amendment to Exchange Act Rule 21F-6, 17 CFR §240.21F-6, that would allow the Commission to "determine that an exceedingly large potential payout resulting from the assessment under paragraphs (a) and (b) of the Rule was not reasonably necessary to fulfill the purposes of the program and thus exercise its discretion to reduce the award to an appropriate amount." 83 Fed.Reg. 34702, 34713 (July 20, 2018). We also object to the proposed guidance on the meaning of "unreasonable delay" under Rule 21F-6.

The reasons for our objections are:

(1) The Securities Whistleblower Incentive and Protection statute, 15 U.S.C. §78u-6, was clearly written to provide for an award of 10 to 30 percent of the total collected monetary sanctions that the whistleblower's original information led the SEC and related agency to recover. Congress decided that 10 to 30 percent of the recovery achieved by the SEC and related agency would provide the best possible incentive for future whistleblowers to report the biggest frauds on the public. Congress knew the money to pay the award would not come from the defendant or have to be appropriated from agency or general Government funds because the awards were only to be paid from already collected monetary sanctions that the Government had in its coffers. 15 U.S.C. §78u-6(b)(2). All of the collected funds from the monetary sanctions are directed to be deposited either into the SEC's Investor Protection Fund ("IPF") according to a formula or the excess to Secretary of the Treasury to invest as a credit to the IPF to replenish the IPF if and when necessary. 15 U.S.C. §78u-6(g) (2), (3), & (4).

(2) There is no statutory authority for funding "other valuable programs" with monies recovered from covered actions and related actions that are derived from the whistleblower program. The statute authorizes only two uses of the funds deposited in the IPF: (1) paying awards to whistleblowers, and (2) funding the activities of the Inspector General of the Commission. 15 U.S.C. §78u-6(g)(2).

(3) The proposed amendment to Exchange Act Rule 21F-6 directly violates the statutory directive in 15 U.S.C. §78u-6(c)(1)(B)(ii) that, in determining the amount of the award, the Commission "shall not take into consideration the balance of the Fund."

(a) The proposed amendment would mandate the Commission to consider "the potential impact any adjustment might have on the IPF." 83 Fed. Reg. 34702, 34715 (July 20, 2018).

(b) Thinly veiled statements of the Commission's consideration of the effect (inferring an adverse effect) of an exceedingly large award on the balance of the IPF and that an unnecessarily excessive award should be husbanded for purposes of the program and sent to the Treasury where it could be used for funding other valuable programs, abound throughout the Commission's stated justification for the proposed amendment. See 83 Fed. Reg. 34702, 34715 - 34716.

(4) The Commission's subjective proposals to determine criteria for "an exceedingly large potential award"... "that was not reasonably necessary to fulfill the purposes of the program" and to adjust such awards downward, do not fulfill the twin purposes of the program to reward whistleblowers and incentivize future whistleblowers. First, for example, a $100 million award is not what a whistleblower would retain. In the vast majority of award applications the award to the whistleblower will be reduced by attorneys' contingency fees, costs, and significant federal, state and local income taxes, leaving the whistleblower a net of less than 40% of the award. Also, the Commission's criteria are not egalitarian. Structuring a statistical matrix of categories of whistleblowers' job titles, salaries and what reward they should receive based on projected lifetimes earnings subject to an algorithm related to a wealth matrix of U.S. citizens (or the whistleblower's country of origin's statistics) has nothing to with the value of the "voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial.....or related action...." Whether the whistleblower is a warehouse manager or a high-level executive of a global business is irrelevant. The size of the award should be determined by the quality of the evidence, the assistance the whistleblower provided, and the SEC's and related agency's ability to use the evidence provided by the whistleblower to prove the securities violations and damages. 15 U.S.C. § 78u-6(b)(1) and 6(c)(1)(B)(i). What possible sum would induce a high-level official in a major international corporation to risk his/her life, future employment, and family's welfare to expose fraudulent corporate activity? Congress legislated that the best inducement was a requirement to pay 10%-30% of whatever total recovery is made from the SEC's and related agency's judgments. There is nothing in the statute to suggest that awards should be reduced because the SEC in its judgment determines them to be exceedingly large. There are no caps, no throttles, and no governors on a large award between 10%-30% of the total recovery.

(5) The proposed criteria do not value the vast deprivations in the quality of the life, health, and safety of whistleblowers that are caused by the whistleblowing. There are the effects of stress and health of the whistleblower going through the length of time necessary to investigate and complete an enforcement and related agency action, and the award process. Whistleblowers are likely to have reasonable concern for their personal safety from retribution from disgruntled officials whose employment were terminated by a defendant corporation in its efforts to qualify for providing substantial assistance to lower the Government's penalties charged against the defendant corporation.

(6) The Commission's proposal to provide guidance regarding the meaning of "unreasonable delay" under existing Rule 21F-6(b)(2) and proposed rule 21F-6(c) would allow for an automatic reduction of the amount of an award to a whistleblower for any delay in reporting securities law violations to the Commission beyond 180 days is unreasonable. Such a guidance penalizes a whistleblower's attempts to pursue internal corporate compliance procedures, which are unlikely to have reached the point within the 180 day period that would allow a corporation to take appropriate remedial action and self-report to the SEC. A whistleblower that is genuinely pursuing internal corporate compliance procedures should not be penalized by having an award reduced if reporting does not occur until after 180 days. We submit that a whistleblower's actions to seek first that its employer correct the unlawful actions are in keeping with current rules and that an award should not be adversely affected because of reporting delay due to such efforts. 17 CFR §240.21F-6(b)(2). The SEC should not decrease a whistleblower's award if the whistleblower did not file a TCR with the SEC within 180 days of obtaining knowledge of securities violations if the whistleblower acted reasonably in following internal reporting channels. Rule 17 CFR § 240.21F-6(a)(4).

(7) The public commentary to the first set of proposed rules caused the Commission to add participation in internal compliance systems to the list of factors that may increase the amount of a whistleblower's award. 17 CFR § 240.21F-6(a)(4)("Internal Reporting Factor"). The Commission adopted the Internal Reporting Factor because it agreed with the public commentary that the best public policy for addressing fraudulent or unlawful actions was to first encourage a business to correct such violations through its own internal corporate compliance system. The SEC wanted companies, after being alerted to the unlawful activity, to take corrective action to comply with the law and discipline or terminate the guilty employees. The presumption was that the corporate executives and board members who were not participating in the violations and had no knowledge of the illegal activity, when confronted with the reports of corporate illegal activity through the company's internal compliance program, would take action to end the violations. This was deemed by the Commission as the best policy instead of a policy that would encourage whistleblowers to first run to the SEC and file complaints prior to allowing the company's executives to correct the problem internally. See Claire M. Sylvia, *Future Development—The SEC Whistleblower Program—The Internal Compliance Debate,* The False Claims Act: Fraud Against

the Government, §2:26, (Supp. June 2018); Rebecca Katz and James Weir, *Plaintiffs' Perspective: The SEC's Final Rules for Whistleblowers Offer A Balanced Approach to an Important New Program*, 8 Sec. Litig. Rpt. 11 (July/August 2011); Umang Desai, *Crying Foul: Whistleblower Provision of the Dodd-Frank Act of 2010*, 43 Loy. U. Chi. L.J. 427, 468 (2012).

(8) Finally, we respectfully suggest that the SEC request Congress to pass a law that extends the statute of limitations in SEC civil enforcement actions involving disgorgements and other penalties from five years to an appropriate later time (10 or 20 years). Such extension of the statute of limitations would enable justice to be done and not to penalize whistleblowers for taking reasonable actions in pursuing internal corporate compliance procedures.

Respectfully submitted,

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