THE RISK MANAGEMENT ASSOCIATION
Serving the Financial Services Industry
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December 16, 2010

VIA rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, File No. S7-33-10

Ladies and Gentlemen:

This comment letter is submitted on behalf of The Risk Management Association ("RMA") in regards to the proposed rules to implement Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") entitled "Securities Whistleblower Incentives and Protection" (the "Proposed Rules") as authorized by The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010 ("Dodd-Frank").

Founded in 1914, RMA is a 501(c)(6) not-for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry. RMA helps banking and nonbanking institutions identify and manage the impacts of credit risk, operational risk, and market risk on their businesses and customers. RMA is the only association that specializes in promoting effective and prudent risk management practices for institutions of all sizes, across the entire financial services industry. RMA has approximately 3,000 institutional members that include banks of all sizes as well as nonbank financial institutions. They are represented in the association by 18,000 risk management professionals who are chapter members in financial centers throughout North America, Europe, and Asia/Pacific.

Section 922 of Dodd-Frank added new Section 21F to the Exchange Act, entitled "Securities Whistleblower Incentives and Protection." Section 21F directs that the Commission pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to a successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding $1,000,000, and of certain related actions.

Financial institutions have invested heavily in recent years in integrating their governance, risk management and compliance functions as a matter of good corporate practice. While this effort was initially undertaken as a response to the Sarbanes-Oxley Act ("SOX"), it has utility beyond mere SOX compliance as the integration of governance, risk management and compliance functions has resulted in improvements in the strategic planning process and business line operations. Moreover, the primary regulators of financial institutions have increasingly focused on the need for enterprise-wide risk management generally and are mandating that financial institutions develop risk appetite policy statements. In short, the regulators are mandating a culture of corporate accountability.

Against this background, RMA respectfully requests the Commission reconsider the Proposed Rules in several important respects in order to promote the governance, risk management and control integration efforts being implemented by financial institutions and other companies subject to the Exchange Act. The proposed rules have the potential to undermine GRC integration efforts, and, as such, are contrary to both the letter and the spirit of the Dodd-Frank Act, which authorized them.

Proposed Rule 21F-4(a)(1) provides that a whistleblower must come forward with qualifying information before receiving any formal or informal request, inquiry, or demand from the Commission staff or from any other authority described in the Proposed Rule about a matter to which the whistleblower's information is relevant. While this approach may be "consistent with the statutory purpose of creating a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators 'come knocking on the door'," it has the potential to subvert bona fide internal governance, risk management and compliance efforts and subsequent internal investigations.

The unintended consequence of the Proposed Rule is to thwart companies' ability to create a responsible and responsive corporate culture, which is at odds with Dodd- Frank. While blowing the whistle on wrongdoers serves the best interest of the company and the marketplace, whistleblowing is no substitute for a robust compliance program which allows for reporting up the line and a careful, thoughtful and deliberate investigation by the subject company. We note that the Proposed Rule does not require the whistleblower to report a suspected violation of the securities laws up the line, but instead merely provides the opportunity to do so. The absence of such a requirement coupled with the bounty payable under the Proposed Rule is a disincentive to report internally and undermines compliance programs, frustrating companies' efforts to instill responsible and responsive corporate cultures.

Another unintended consequence of the Proposed Rule is that it creates a race for companies to self-report violations to the Commission in advance of reporting by employees which may lead to incomplete internal investigations or investigations based, not on fact, but on rumor and innuendo, which could have the effect of diluting a reporting company's focus from more pressing, legitimate matters. Moreover, to the extent that the Commission engages in a number of highly publicized employee-initiated investigations, it is likely that there will be a surge of employee reporting. This is likely to have the unintended consequence of potential false rumors about companies despite the Commission's requirements that a reporting employee submit information under penalty of perjury, which draws a distinction between a knowing falsehood and inaccurate information. Equally troubling is that the Proposed Rule does not mandate that the Commission inform the subject company of the possible violation.

We respectfully suggest that the proper means for the Commission to fully implement the whistleblower provisions of Dodd-Frank and serve the best interests of all stakeholders – corporations, employees, the marketplace, and the Commission – is to require whistleblowers to first observe internal compliance reporting protocols under the protection of confidentiality, and only after doing so, permit the employee to report the suspected violation to the Commission, provided that a reasonable time has elapsed before first reporting to the subject company and blowing the whistle.

The goal of the Commission should be to encourage companies to develop robust internal control and compliance protocols, to encourage employees to partake of such protocols, and to foster high standards of corporate governance, risk management and compliance, not to provide a financial incentive for an employee to report directly to the Commission without giving his or her employer the opportunity to investigate a possible violation of the securities laws.

Submitted on behalf of The Risk Management Association:

Edward J. DeMarco, Jr.,
General Counsel and Director of Regulatory Relations