AMERICAN ASSOCIATION for JUSTICE
Formerly the Association of Trial Lawyers of America (ATLA®)

December 16, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 (File Number S7-33-10)

Dear Ms. Murphy:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Security and Exchange Commission's (SEC) Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. *See* 75 Fed. Reg. 70488.

AAJ, with members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, promote injury prevention, and foster the disclosure of information critical to public health and safety. Whistleblowers are essential to the enforcement of federal security laws and AAJ supports provisions that provide for compensation and protection of people that provide this essential function. Nevertheless, the SEC should broaden the scope of what is covered under the proposed regulations provisions on original information. Furthermore, the SEC should not consider further regulations on attorney fees and should continue to allow whistleblowers to enter into contingency fee agreements.

I. The SEC Should Broaden the Scope of What is Considered "Original Information"

The proposed rule states that the SEC will consider that the whistleblower provided original information that led to the successful enforcement of a judicial or administrative action in the following circumstances:

> "(1) If you gave the Commission original information that caused the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning new or different conduct as part of a current examination or investigation, and your information **significantly contributed** to the success of the action; or (2) if you gave the Commission

> original information about conduct that was already under examination or investigation by the Commission, Congress, any other federal, state, or local authority, any self-regulatory organization, or the Public Company Oversight Board (except in cases where you were an original source of this information as defined in paragraph (b)(4) of this section), and your information **would not otherwise have been obtained and was essential to the success of the action.**" (Proposed Rule 21F-4(c), emphasis added)

The requirements proposed in this definition are overly stringent and could potentially be used to defeat the very purpose of the rule. First, this language requires that the whistleblower prove that information "significantly contributed" to the success of the action. This language is not rooted in the Dodd-Frank Act and the SEC does not provide any guidance on how "significantly contributed" will be defined. On its face, this language seems like an overly high standard that would be near impossible to meet. AAJ agrees that whistleblower information needs to be reliable in order for an award to be tendered but this terminology and lack of definition are too restrictive and would unnecessarily limit the amount of awards that are approved.

Additionally, AAJ believes the requirement that the whistleblower information "would not otherwise have been obtained and was essential" to the success of the action to be overly burdensome and not supported by the Dodd-Frank Act. Whistleblowers should not be disqualified because the staff could have obtained the information "in the normal course of the investigation." This approach would unfairly prejudice the whistleblower who provided the information, but would be barred from receiving an award because the staff could have found the information, even where it did not do so. The SEC should eliminate this requirement and instead reward any whistleblower providing assistance with original information leading to a successful enforcement or related action.

II. Attorney Fees

a. Limitations on Fees

The SEC should not consider additional rules limiting attorney fees. Licensed attorneys are already subject to professional rules of conduct that prohibit charging excessive fees in the state where they are licensed. The Model Rules of Professional Conduct provide, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."[1] As a result, any additional rules would be duplicative. Furthermore, this issue is fundamentally a state issue and should be dealt with as such. The SEC should not devote its resources to developing additional rules regarding attorney fees.

b. Fee Agreements

AAJ supports that the proposed rule allows whistleblowers and their attorneys the freedom to enter into fee arrangements freely. Attorneys are essential to the whistleblower process. As the proposed rule contemplates, it is not unusual for whistleblowers to be subject to

[1] Model Rule of Professional Conduct 1.5(a) (2009).

retaliation in their work and personal lives. As a result, attorneys provide an essential service by ensuring all whistleblower protections are observed and advising their clients throughout the whistleblower process. Contingency fee agreements assure that attorney representation remains accessible to all whistleblowers.

AAJ appreciates this opportunity to submit comments in response to the Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. If you have any questions or comments, please contact Sarah Rooney, AAJ's Regulatory Counsel at (202) 944-2805.

Sincerely,

C. Gibson Vance
President
American Association for Justice