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VIA ELECTRONIC MAIL

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

Dear Ms. Murphy:

We are a small commercial litigation firm in New York City, and in that capacity we have represented whistleblowers (and anticipate continuing to do so in the future). Based on that experience, as well as current matters in which we are involved, we respectfully submit comments on several provisions contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act that constitute the new Section 21F of the Securities Exchange Act of 1934 (the "Act").

A. Proposed Rule 21F – Interpretation of Section 21F(a)(3) of the Securities Exchange Act of 1934 in light of Section 924(b) of the Act.

Section 21F(a)(3) of the Act reads:

> The term "original information" means information that –
>
> (A) is derived from the independent knowledge or analysis of a whistleblower;
> (B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and
> (C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

Section 924(b) of the Act reads:

> Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 21F(a)(3) of the Securities Exchange Act of 1934 as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the

> regulations, if the information is provided by the whistleblower after the date of enactment of this subtitle.

These two paragraphs, read together, argue for the following interpretation, which differs from that assumed by page 17 of the SEC's Proposed Rules.

Where whistleblowers are in the process of assisting the SEC or other governmental bodies in an ongoing investigation, that continuing cooperation should be considered "original information" for purposes of the Act, even if the first contact made by the whistleblower to the SEC and the initial information provided by the whistleblower predates the enactment of the Act. Our proposed interpretation finds favor in the language of Section 924(c), which permits an award to be given out to a whistleblower "regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle."

Clearly, Congress intended for those already in the process of assisting the SEC or other governmental agencies to be rewarded for that continuing effort, as long as such efforts continued past the date of enactment.

To administer the provisions otherwise would be to deny the whistleblowers in all of the recent high-profile cases (Bernard Madoff, Bear Stearns, Lehman Brothers, Allen Stanford, Kenneth Star, Marc Dreier, etc.) of the statutes intended benefit, even where the SEC continues to require cooperation from those whistleblowers because it has yet to complete its investigations and legal actions in those matters. In most, if not all, of those cases, the whistleblowers came forward for the first time before the date of enactment, but are still providing testimony and information to the SEC today. This runs contrary to the statute's intent to reward whistleblowers in cases where the SEC is still pursuing potential actions.

B. Proposed Rule 21F-4(a)(1) and Request for Comment, Questions 2 and 3

Question 2:
Does Proposed Rule 21F-4(a)(1) appropriately define the circumstances when a whistleblower should be considered to have acted "voluntarily" in providing information about securities law violations to the Commission? Are there other circumstances not clearly included that should be in the rule?

Question 3:
Should the Commission exclude from the definition of "voluntarily" situations where the information was received from a whistleblower after he received a request, inquiry, or demand from a foreign regulatory authority, law enforcement organization or self-regulatory organization? Similarly, should the Commission exclude from the definition of "voluntarily" situations where the information was received from a whistleblower where the individual was under a pre-existing legal duty to report the information to a foreign regulatory authority, law enforcement organization or self-regulatory organization?

We disagree with the Commission's proposal to exclude whistleblowers who came forward in response to contact by an authority (as discussed below in Section C of our comments). While it may be appropriate to exclude those who produce documents in response to a demand or only provide testimony once subpoenaed, those whistleblowers who, upon contact by an authority, volunteer valuable information and cooperate in an affirmative and thorough manner should be considered to have provided information "voluntarily" within the meaning of the statute.

After all, many potential whistleblowers will not know about the Act, and further will not have any idea what agency to approach with their information. To place the onus on an unsophisticated whistleblower to ascertain where to go without any introductory contact by an authority would seem to be unreasonable.

Further, some whistleblowers have, once contacted by an authority, not merely responded to such contact but gone so far as to voluntarily collaborate with authorities in their investigations – such candor and genuine assistance should not be discouraged.

To address the obvious concern of not rewarding those who are uncooperative, but ultimately are not charged themselves and provide key information leading to successful prosecutions, we propose the Commission review claims on a case-by-case basis in circumstances where the first contact is made by the authority and not by the whistleblower. For example, whistleblowers who, when approached about a specific topic have voluntarily given the Commission key information into other areas – e.g., a person approached about a specific transaction comes back to the Commission voluntarily to provide key information about patterns and practices across many transactions within the whistleblower's company – should be rewarded under the statute.

C. Proposed Rule 21F-(4) and (5), Request for Comment, Question 16

Question 16:
Is the provision that would credit individuals with providing original information to the Commission as of the date of their submission to another Governmental or regulatory authority, or to company legal, compliance, or audit personnel, appropriate? In particular, does the provision regarding the providing of information to a company's legal, compliance, or audit personnel appropriately accommodate the internal compliance process?

With respect to the definition of "original source" in proposed Rule 21F(4) and (5), we agree that the whistleblower should be deemed the "original source" of information even if the original submission of information is to "another authority" as that term is used on page 32 of the Request for Comments. However, we disagree with the interpretation of what term "another authority" means with respect to this provision of the Act.

The proposed rule appears to limit "another authority" to: "Congress, any other federal, state, or local authority, any self-regulatory organization, or the Public Company Accounting Oversight Board." Proposed Rule 21F-5.

We believe that the term "other authority" should also include Receivers, Trustees, and Examiners appointed by the Federal or Bankruptcy Courts of the United States. In many cases the SEC has relied upon information discovered by, in particular, Examiners appointed in high-profile bankruptcy such as Enron and Global Crossings. There are currently several high-profile Examiners in cases where whistleblowers have actively provided the Examiners with original information, such as Lehman Brothers and Washington Mutual. To the extent that whistleblowers have provided these Court-appointed officials with original information that is later turned over to the SEC and successfully used in an SEC action, those whistleblowers should be eligible for the same reward as those whistleblowers that spoke directly to the SEC first.

D. Proposed Rule 21F-4(b)(7) and Request for Comment, Question 17

Question 17:
Is the 90-day deadline for submitting Forms TCR and WB-DEC to the Commission (after initially providing information about violations or potential violations to another authority or the employer's legal, compliance, or audit personnel) the appropriate timeframe? Should a longer time period apply in instances where a whistleblower believes that the company has or will proceed in bad faith? Would a 90-day deadline for submitting the TCR and WB-DEC also be appropriate in circumstances where an individual provides information to an SEC staff member? Would a shorter time frame be appropriate? Should there be different time frames for disclosures to other authorities and disclosures to an. employer's legal, compliance or audit personnel?

Proposed Rule 21F-4(b)(7) states:

> If you provide information to Congress, any other federal, state, or local authority, any self-regulatory organization, the Public Company Accounting Oversight Board, or to any of the persons described in paragraphs (b)(4)(iv) and (v) of this section, and you, within 90 days, submit the same information to the Commission pursuant to § 240.21F-9 of this chapter, as you must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award under §§ 240.21F-10 and 240.21F-11 of this chapter, the Commission will consider that you provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons.

We believe that placing the onus on an unsophisticated, and likely unrepresented, whistleblower to submit the same information to the Commission within 90 days to be unfair. Instead, all "other authorities" that may be considered original sources of information pursuant to Proposed Rule 21F-5 should be required to report any information a whistleblower brings to them to the SEC within 90 days, and further for those "other authorities" to notify the whistleblower that they are obligated to pass on such information to the SEC.

Question 17 additionally requests comments with respect to the proposed rule regarding what should happen as far as an obligation to report to the SEC if the whistleblower initially provides information to his/her employer, although the proposed rules do not seem to expressly consider original information provided to the employer to be "original information."

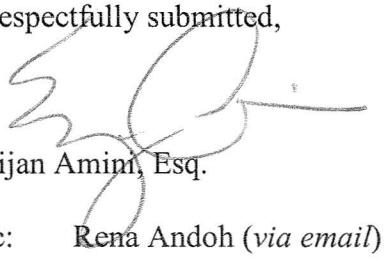
When a whistleblower reports a violation or potential violation internally, 90 days is simply far too short of a time for the whistleblower (who is frequently a lower-ranking, non-management employee) to know whether the concerns raised by the whistleblower have been addressed or thrown aside. The time for a whistleblower to report to the SEC if there is an attempt to report internally first should be at least 6 months, with longer dates for exceptional circumstances. By way of example, if an employer falsely leads a whistleblower to believe the issues are being addressed while the employer in fact does not address them, the whistleblower should not be discouraged from reporting any violations simply because 90 days or 6 months have passed as a result of the employer's bad actions.

E. Proposed Rule 21F-9(d) and Request for Comment, Question 35

Question 35:
Is the Commission's proposed process for allowing whistleblowers 120 days to perfect their status in cases where the whistleblower provided original information to the Commission in writing after the date of enactment of Dodd-Frank but before adoption of the proposed rules reasonable? Should the period be made shorter (e.g., 30 or 60 days) or longer (e.g., 180 days)?

Requiring the original information to have been submitted to the Commission in writing seems to be an unfair and unnecessary restriction if the whistleblower has testified or communicated with the Commission orally. In many cases, the information provided prior to the enactment of these regulations and the concomitant new forms that require writing was provided to the Commission orally – either through testimony or other oral communication. The Commission should have records of such oral communications, and therefore the lack of a written communication should not in any way impede an otherwise-eligible whistleblower.

Respectfully submitted,



Bijan Amini, Esq.

cc: Rena Andoh (*via email*)