



December 17, 2010

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

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

We respectfully submit our comments on the Securities and Exchange Commission's (SEC or Commission) proposed rules to implement Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") entitled "Securities Whistleblower Incentives and Protection." Our comments are based on our experiences in the role of advisor to our clients as they evaluate their whistleblower processes in the context of their overall compliance programs. While we are neither a registrant nor an accounting firm, we are offering insight arising from a multitude of experiences as an advisor to hundreds of companies (domestic and foreign filers as well as large and small companies) in determining how to improve their compliance structure and processes. In this letter, we also provide commentary with respect to the unintended consequences of the proposed rules on professional service providers who may not be deemed to fall under any of the rule's proposed exclusions applying to "groups with established professional obligations that play a critical role in achieving compliance with the federal securities laws."

We offer the following recommendations for the Commission's consideration.

Require Internal Reporting First and Extend the 90-Day Period to a More Realistic Time Frame

We continue to be concerned about the impact the Section 922 whistleblower rules will have on corporate internal compliance programs and that the rules may undermine established corporate compliance programs by giving employees a substantial financial incentive to bypass internal reporting mechanisms in pursuit of bounty payments from the SEC. While the SEC's proposal reflects an effort to respond to these concerns, we are not satisfied that it goes far enough. The requirement that a whistleblower must supply "original information" which the SEC has not otherwise already obtained creates strong incentives to disclose the matter to the Commission, rather than to report up through established corporate compliance channels. The proposed rules would allow a whistleblower's report to the SEC to relate back to the date of the same person's earlier internal corporate report, as long as the whistleblower contacts the SEC within 90 days of reporting internally.



While this provision would allow for internal reporting, it does not encourage it. We recommend that internal reporting should be a prerequisite to an SEC whistleblower report. In the end, internal reporting and resolution of the matter is a superior public policy alternative to a pipeline of whistleblower calls to the Commission. Therefore, we recommend that the issuer's employees should first be required to use internal compliance mechanisms, absent extenuating circumstances. In addition, we recommend a period of longer than 90 days to allow sufficient time for an internal review to proceed. We suggest a period of at least 120 days to allow sufficient time for a thorough and balanced inquiry of complex issues.

Clarify the Terms “Reasonable Time” and “Bad Faith”

Ambiguity with these terms creates the unintended result of second-guessing of internal reviews by whistleblowers eager to move forward to stake a claim with the Commission. Furthermore, a mere disagreement with the conclusions of an internal review is not a basis to invoke the “bad faith” exception.

Require Internal Reporting First by Other Professional Service Providers

The Commission provided proposed rules that included certain exclusions for professionals and others under the definition of “independent knowledge,” and invited comment on whether the proposed exclusions are appropriate and whether they should be extended to other types of privileged communications or other types of professionals who frequently have access to confidential client information. Specifically, Question 11 on page 29 states:

Should the exclusion for “independent knowledge” or “independent analysis” go beyond attorneys and auditors, and include other professionals who may obtain information about potential securities violations in the course of their work for clients? If so, are there appropriate ways to limit the nature or extent of the exclusion so that any recognition of relationships of professional trust does not undermine the purposes of Section 21F?

We believe that employees of professional service providers should not be tempted to become whistleblowers based on information to which they have access or that they obtain either directly or gratuitously as a result of specific services they are engaged to deliver. These individuals are different from employees of registrants, because they are hired to execute a statement of work which may require them to handle sensitive client information. If the SEC were to encourage and reward whistleblower activities by these individuals, it would have significant repercussions to the professional services firms' delivery model and business.

While we recognize the public policy issues the SEC intends to consider in formulating its Section 922 rules, we believe the Commission should incorporate into its rules an approach for a professional service provider which mirrors its approach for registrants. In other words, the Commission's rules should encourage the employees of a professional



service provider to communicate sensitive information through the provider's established channels and processes before going directly to the SEC. This model would be a logical extension of the approach we recommend on pages 1 and 2 of this letter to require internal reporting first by employees of registrants. Such an approach would almost always result in some form of communication by the professional services provider with the appropriate executives of the registrant, leading to the investigatory and other follow-up one would expect had the matter been internally reported by one of the registrant's employees.

We appreciate the opportunity to submit our comments on the Commission's proposed rule. We hope they are helpful to the Commission and to its staff. If the staff would like to discuss any of the points made in this letter, please contact Jim DeLoach at (713) 314-4981.

Very truly yours,

A handwritten signature in cursive script that reads "Protiviti Inc.".

By: James W. DeLoach, Jr.
Managing Director