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December 17, 2010

Via Email:*rule-comments@sec.gov*

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

Re: File No. S7-3-10
Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934

Dear Ms. Murphy:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to comment on the proposal by the U.S. Securities and Exchange Commission ("SEC" or "the Commission") to adopt rules (the "Proposed Rules") to implement the "whistleblower" provisions of Section 21F of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act.").

WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has $1.2 trillion in assets and more than 278,000 team members across our 80+ businesses.

COMMENTS

WFA supports the Commission's efforts to encourage individuals to come forward with information relating to violations of the securities laws. WFA itself has long-standing and effective policies and procedures in place to encourage its team members to report

suspected violations of applicable laws, rules and regulations and to protect those that do come forward. Wells Fargo has participated in the development of the comment letters of industry groups SIFMA and the Financial Services Roundtable. We are supportive of the comments in those letters. With this letter, we wish to add some perspective from a large retail brokerage operation within a diversified financial services company.

I. The Proposed Rules Encourage Individuals to Bypass Internal Processes

According to the Commission, the Proposed Rules are "not intended to discourage whistleblowers who work for companies that have robust compliance programs to first report the violation to appropriate company personnel." However, as written the Proposed Rules provide significant incentives for individuals to ignore internal company procedures for reporting concerns of illegal or improper conduct, thereby delaying, or in the worst case depriving, companies of the ability to respond and take appropriate action. The Commission requests comment on whether it "should consider a rule that, in some fashion, would require whistle-blowers to utilize firm-sponsored complaint and reporting procedures." We strongly submit that the response should be "yes." Companies should not be required to compete with the Commission for the opportunity to learn of, investigate and respond to information about possible misconduct or illegal activity by its employees, officers, directors, independent contractors or agents.

A. The Final Rule Should Promote The Development Of Robust Internal Compliance Procedures, Not Incentives To Bypass Them.

WFA, like many other companies, has invested significant resources into developing robust policies and procedures for learning of and responding to possible violations. The Proposed Rules should be revised to give companies the opportunity to utilize such internal compliance procedures to resolve concerns, rather than providing incentives for individuals to bypass them. Allowing companies to address concerns at the earliest possible stage provides the best assurance that issues do not become entrenched and wide-spread.

Requiring individuals to first utilize internal company procedures also allows for the most effective allocation of the Commission's resources. If companies are not provided the opportunity to first respond to complaints, the Commission staff will be required to review every complaint to determine whether a valid claim has been made. Providing companies the first opportunity to address claims will relieve this strain on Commission resources.

B. If Use Of Internal Procedures Is Not Required, It Should Be A Significant Factor In Determining The Amount Of Any Award.

For the reasons stated above, the Final Rules should require an individual to exhaust internal compliance procedures before raising such claims with the SEC. Anything less has the potential to substantially weaken corporate compliance programs and severely

undermine the culture of compliance that WFA and many other companies have worked so hard to maintain. However, if the Commission does not mandate internal reporting, it should, at a minimum, take into consideration whether such reporting was done in determining the amount of any award. Making internal reporting a factor in any award determination will encourage the use of those policies and procedures to a greater extent, which in turn will provide companies a better opportunity to learn of and effectively address concerns.

C. The Commission Should Notify Companies Of Whistleblower Complaints.

That the Proposed Rules do not require the Commission to notify a company when it is the subject of a whistleblower complaint also is deeply troubling. Failing to allow the company to be involved at the earliest possible moment when an issue of possible misconduct is raised is wholly inconsistent with principles of strong corporate governance. Whistleblowers should not be financially incented to leave a company in the dark about issues that the company otherwise would readily investigate and resolve. If the Commission does not require internal reporting before going to the Commission, it is critical that the Commission provide the information regarding such claim at the earliest opportunity to allow the company the opportunity to address the issue.

II. The Proposed Rules Will Undermine Successful Compliance Systems

In implementing Congress' whistleblower law, the SEC in its rulemaking has defined a number of key terms that set the threshold for eligibility as a whistleblower. We believe, however, that some of these definitions work to undermine existing and robust compliance and supervisory systems.

A. The Proposed Rules Do Not Appropriately Define Who Is A Whistleblower.

The SEC has defined a whistleblower as an individual who provides information to the Commission relating to a "potential violation" of the securities laws. While presumably the SEC is concerned that it needs to protect those who in good faith bring information to the SEC's attention, we believe that this will have the unintended consequence of creating incentives for individuals to flood the SEC with information about daily and routine brokerage activity that in no way constitutes a securities law violation. Treating as whistleblowers those who provide information regarding "potential violations" without any threshold defining criteria or good faith standard would only serve to frustrate the effective and efficient administration of genuine whistleblower claims.

B. The Proposed Rules' Definition of "Voluntary" Will Distort the Compliance Process

The SEC has explained that "voluntary" for the purposes of the statute cannot include information provided after a request for information, formally or informally, from the SEC or certain other described authorities. The proposed rules contain a significant carve-out that permits an employee who provides information to an employer pursuant to a regulatory request to become a whistleblower if the employer fails to disclose that information in a "timely" manner. The rules would determine "timely" by referencing the schedule set for production by the requesting regulatory authority. However, as the SEC is well aware, there are innumerable and appropriate circumstances where as part of the investigative process an employer requires additional time to meet a production schedule. Given the monetary incentives afforded those with whistleblower status, this provision will likely result in employees and their attorneys simply monitoring to the minute whether the brokerage firm has delivered to the regulator the requested information rather than assessing whether there has been good faith participation in the process. WFA feels it would be preferable to eliminate this carve out, and, instead, utilize existing processes to penalize those who fail to provide requested information in a timely manner.

The Proposal would also credit a person as acting "voluntarily" in circumstances that must be quoted to help highlight the inherent difficulty of this expansion of whistleblower status:

> "The standard described in Proposed Rule 21F-4(a)(1) would credit an individual with acting "voluntarily" in certain circumstances where the individual was aware of fraudulent conduct for an extended period of time, *but chose not to come forward as a whistleblower until after he became aware of a governmental investigation* or examination (such as by observing document requests being served on his employer or colleagues, but before he received an inquiry, request, or demand himself, assuming that he was not within the scope of an inquiry directed to his employer). Is this an appropriate result, and, if not, how should the proposed rule be modified to account for it?" (Emphasis added)

The SEC should eliminate this provision. Persons in the employ of a company aware of wrongdoing for an extended period of time should not receive any reward for coming forward only after learning that the government is interested. This conclusion would be especially true where the employee in addition to being aware of the wrongdoing, makes no attempt whatsoever to bring the matter to the attention of the employer. As discussed above, if the Commission believes such a provision should remain, it should, at a minimum, include a requirement that the individual must first have reported the wrongdoing to the employer.

Similarly, the Commission acknowledges that the Dodd-Frank provisions should not create incentives for persons who obtain information of wrongdoing through the legal,

audit and compliance functions to circumvent or undermine the proper operation of the employer's internal processes. However, the proposed rules do just that. Under the proposed rules, the SEC would allow an employee who learns about potential violations only because a compliance officer questions him or her about the conduct to become a whistleblower if the company does not disclose the information in a timely fashion even though the employee would not have otherwise had "independent knowledge." As such, it appears that a person could be asked a direct question about a violation by the firm, decline to answer, then approach the SEC with that very same information and claim whistleblower status. We urge the SEC to revisit this aspect of the Proposal. It simply is untenable to have a compliance structure that will lead to the creation of whistleblowers out of a firm's efforts to fulfill its compliance functions

III. Whistleblower Rules Will Undermine Existing SEC Processes

WFA is concerned that the current structure of the Proposal could undermine the ordinary SEC examination and investigative process, and place firms in a position of no longer being able to view interactions with the SEC as routine. As its primary missions, the SEC looks to protect investors and promote fair and efficient markets. It uses its examination, inspection and investigative authority to help fulfill these missions. There are existing means for the SEC to use these powers to determine if there are securities law violations and make an assessment of the appropriate regulatory response to any violations uncovered. Under the proposed rules, employees may view the mere notice of an SEC exam, inspection or investigation as an invitation to place themselves first in line for a potential whistleblower bounty without considering the substance or merits of the underlying inquiry. In turn, the Commission staff will be in the position of having to view any information brought to its attention as something that might be worthy of a sanction large enough to reward the person bringing forth the information. Should the Commission not pursue the potential violation aggressively enough in the subjective eyes of the "whistleblower", the staff will be subject to accusations of "going soft" on the industry. We almost certainly would have to assume that every line of inquiry with any employee might form the next whistleblower complaint. This confusion will exist all the more as the Proposed Rule will not require that individuals report suspected wrongdoing first to their employer.

IV. Other Concerns

WFA supports rules that would make certain that culpable whistleblowers are completely and permanently ineligible for awards. To do otherwise would reward bad actors for their conduct. At most, a culpable person who provides original information about his or her own wrongdoing should be considered for a reduction in the resulting personal sanction if circumstances warrant.

Similarly, violations of laws that do not rise to the level of criminal acts should also render an individual ineligible for any award. The SEC should declare ineligible anyone who furnishes information in violation of existing judicial or administrative orders

and should deny, or at least reduce the amount of, any award to individuals who publicly disclose the original information. The SEC conducts its inquiries in a nonpublic manner. It is critical that the Commission does so as the resulting investigation may often provide no evidence of wrongdoing. In those circumstances, public disclosure of the information may do tremendous harm to companies, brokerage firms and shareholders.

Similarly, the SEC should state explicitly that a person trading on the basis of or in possession of the whistleblower information, or furnishing the information to anyone who trades while in possession of the information is ineligible for an award. This rule should apply regardless of whether the trading activity itself violates the securities laws. In no instance should an individual be allowed on one hand to collect a whistleblower award while on the other profit from activity revealing intent to gain from market activity related to that same information.

CONCLUSION

WFA commends the SEC for the work it has done in proposing rules to implement the whistleblower provisions of the Dodd-Frank Act. We believe that there are key aspects of the Proposal that deserve some modification in order to better follow the intent of the statute. We look forward to working with the SEC as it strives to create a fair and efficient whistleblower process.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs