SANFORD WITTELS & HEISLER, LLP
1666 Connecticut Ave., Suite 310
Washington, D.C. 20009
Direct Dial: (202) 742-7780
Fax: (202) 742-7776
E-Mail: dsanford@swhlegal.com
www.swhlegal.com

555 Montgomery Street, Suite 820
San Francisco, CA 94111
Phone: (415) 433-4949
Fax: (415) 433-7311

1350 Avenue of the Americas
31st Floor
New York, NY 10019
(646) 723-2947
Fax: (646) 723-2948

440 West Street
Fort Lee, NJ 07024
(201) 585-5288
Fax: (201) 779-5233

December 17, 2010

VIA EMAIL: *rule-comments@Sec.gov*
Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
00 F Street, NE
Washington, DC 20549

Re: **File Number S7-33-1O, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-63237 (Nov. 3, 2010)**

Dear Ms. Murphy:

I am submitting comments to the Securities and Exchange Commission's ("Commission)" Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. My firm has expertise in representing whistleblowers bringing claims under the False Claims Act, 31 U.S.C. §§ 3729–3733, as well as under other federal and state whistleblower protection statutes.

I write to specifically address Proposed Rule 21-4(a) – Voluntary submission of information. As written, the rule too narrowly construes when whistleblowers have voluntarily provided information to the Commission and does not comport with the statutory intent to encourage whistleblowers to come forward, and may serve as a disincentive for certain whistleblowers to come forward with information. The current language of the proposed rule indicates that only information provided "before you or anyone representing you . . . receives any request, inquiry or demand for from the Commission" will be considered voluntary. This rule defines under what circumstances submission of information to the Commission will be considered voluntary. Whistleblowers are only eligible for an award if they voluntarily provide information to the Commission.

In particular, many corporate employees are required to sign confidentiality agreements with their employers that would prevent them providing information to the

Commission absent a subpoena or other request compelling cooperation. Thus, the proposed rule would potentially force many individuals with vital information about violations of federal securities laws to chose between breaching their confidentially agreements with employers and providing information to the Commission in a manner under which they would be eligible for an award. Moreover, the proposed rule is inconsistent with Congress' intent "to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated securities laws." S. Rep. No. 111-176 at 110 (2010).

Information provided to the Commission should not be considered *per se* involuntary because it was provided pursuant to a "request, inquiry, or demand." A better approach would be for the rule to allow for whistleblowers to preliminarily come forward and represent to the Commission that they posses information, and indicate their preference to provide that information pursuant to a subpoena or other request so as not to run afoul of any confidentiality agreements they might have signed with their employer. Whistleblowers with information about securities fraud should be afforded an avenue under which they can preserve their eligibility to receive an award without risking the consequences of violating prior confidentiality agreements they might have signed. While the Dodd-Frank Walls Street Reform and Consumer Protection Act protects employees against retaliation for reporting securities violations, it does not prevent employers from taking action against employees who violated confidentiality agreements.

Very truly yours,

David Sanford