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Enterprise Cabling & Security Solutions  
Electrical and Electronic Wire & Cable  
Fasteners  
Supply Chain Services

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December 17, 2010

**Via Online Submission to Regulations.gov**

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

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

Dear Ms. Murphy:

Anixter International Inc. ("Anixter")<sup>1</sup> appreciates the opportunity to provide comments on the proposal by the U.S. Securities and Exchange Commission (the "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 Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). While the Proposed Rules address some of the issues arising from the Act, Anixter has very serious concerns on the impact of the whistleblower provisions on our internal corporate compliance program.

**BACKGROUND**

On November 3rd, in accordance with Section 922 of the Act, the Commission published the Proposed Rules to establish a process for rewarding individuals who provide it with information leading to successful enforcement actions. Such awards are very likely to encourage persons with knowledge of possible violations of the Federal securities laws to report directly to the SEC, thereby depriving companies of the opportunity to conduct an investigation of the allegations and self-report if warranted. The awards are also very likely to encourage reporting of allegations which have nothing to do with the Federal securities laws, as a significant percentage of the population has little knowledge of those laws or what circumstances may violate them. The increased burden on the SEC to screen complaints and

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<sup>1</sup> Anixter is a wholesaler of enterprise cabling solutions and security products, electrical and electronic wire and cable, fasteners and other small components. Its 8,000 employees operate in 260 cities in 50 countries.

investigate those which may have merit will strain the Commission's resources and may lead to less effective policing of securities law violations rather than creating a stronger system.

Anixter is concerned that the Commission's program fails to place sufficient reliance on the effectiveness of the internal compliance procedures that we have established, and will do damage to those efforts as employees and others with knowledge about possible violations of applicable securities laws, rules and regulations. As discussed in detail below, Anixter believes that the Proposed Rules must be revised to give companies greater credit for maintaining effective internal compliance procedures, rather than providing incentives for bypassing them. Otherwise, companies that, like Anixter, have for years worked to develop and maintain procedures for addressing such matters may end up questioning their value, and the good working relationship that most companies have with the majority of their employees could be negatively affected as the paradigm shifts to reporting violations to the SEC in the first instance, rather than reporting them to the company and working with the company to address such problems internally. Moreover, by providing significant incentives to bypass company policies and procedures, and so little incentive to use them, the Commission will lose the benefit of the "filtering" effect provided by robust company policies and procedures, receiving far more complaints than they will be able to adequately assess and investigate (including many baseless, unfounded, and fallacious complaints by persons simply seeking a windfall). The inevitable flood of complaints will strain Commission resources and may cause it to miss a truly significant complaint.

#### **I. The Proposed Rules Will Encourage Whistleblowers to Bypass Internal Processes**

In drafting the Proposed Rules, the Commission noted that it considered and weighed a number of possibly competing interests. Chief among these considerations was whether the possibility for the monetary incentives provided to whistleblowers by Section 21F of the Exchange Act would reduce the effectiveness of a company's existing compliance, legal, audit and similar internal processes for investigating and responding to possible violations of the Federal securities laws. Although the Commission specifically stated that the Proposed Rules were drafted with the goal of preserving the role of corporate compliance programs, we believe that the Proposed Rules do the opposite. Instead of incentivizing the use of internal processes and procedures prior to reporting externally to the SEC, the monetary awards and the timing requirements set forth in the Proposed Rules encourage opportunistic whistleblowers to report possible violations to the Commission first in order to not be barred from receiving a windfall.

Internal compliance programs are a critical component of sound corporate governance. These programs are designed to meet policy prescriptions issued by the Federal government, including the Sarbanes-Oxley Act of 2002, and have long been encouraged by Federal governmental authorities, including the U.S. Sentencing Commission and the Department of Justice. In order to be effective, compliance programs rely heavily on internal reporting of possible violations of law and corporate policy to identify instances of non-compliance. If whistleblowers are incentivized to forego the internal reporting requirements, the ability of

companies to discover instances of possible wrongdoing, to investigate the underlying facts and to take remedial actions (including voluntary disclosures to relevant authorities), will be severely hindered.

While the Proposed Rules do not specifically discourage whistleblowers from reporting internally, they also do not encourage such disclosure. Because of strict timing requirements whereby the first reporter of a possible violation will receive the bulk of any monetary reward, even the most steadfastly loyal employee will be incentivized to report externally as soon as possible in order to secure his or her place in line. Anixter believes that the most effective way to encourage whistleblowers to utilize corporate compliance programs is to require them to do so as a condition to receiving awards under the Proposed Rules.

Although we strongly believe that whistleblowers should be required to first report through a company's already established corporate compliance program, we understand the Commission's concern regarding retaliation, as well as the uncertainty in determining when internal reporting would be futile. We do acknowledge that some companies may not currently have effective internal compliance programs in place, and there may be situations where a whistleblower has a legitimate and supportable claim that a company's internal policies are inadequate or that using internal procedures will work to his or her detriment (even considering the Act's significant anti-retaliation protections). Although Anixter's compliance program already requires employees to report possible violations of law or its own ethics policies and prohibits retaliation against those employees, we understand that not every company follows these same practices. Because of this, in the alternative, we would recommend the Commission institute a dual reporting mechanism, whereby the whistleblower would be required to simultaneously report to the Commission and the company's corporate compliance program. This would allow the whistleblower to maintain his or her place in line for the monetary reward and receive protection from retaliation at the same time as providing the affected company with notice of the situation and the chance to commence internal investigations. The Commission would then have the opportunity to monitor the progress of the internal investigation and determine if the company has taken appropriate remedial actions within a reasonable period of time.

An internal reporting requirement, however implemented, is unlikely to have a negative effect on the Proposed Rules, as companies would be given a more immediate opportunity to cure or mitigate possible violations. Additionally, requiring whistleblowers to use internal procedures is likely to cause companies with weak policies to improve them, and those with no policies to adopt them. Well-developed internal policies and procedures can lead to a much quicker resolution of problems and, as discussed below, preserve the Commission's own resources for addressing more significant issues that the company is unable (or unwilling) to address. Therefore, we believe that the Proposed Rules should be modified to require that possible whistleblowers utilize in-house complaint and reporting procedures, whether by first reporting to the company's internal compliance program or by dual reporting to both the Commission and the affected company, thereby giving employers an opportunity to address possible misconduct before such individuals make a whistleblower submission to the Commission.

## **II. Requiring the Use of Internal Procedures Would Allow Companies and the Commission to More Efficiently Allocate Resources.**

We believe that the Proposed Rules, as drafted, will strain the Commission's already limited resources. As Commissioner Aguilar noted, "[m]any people use internal whistleblower hotlines to "vent" and [the SEC has] received reports that are unfounded even where a reward is not given for making a report.<sup>2</sup> As noted above, under Anixter's Business Ethics and Conduct Policy, employees are required to report possible violations of company policy or the law to the company and are protected from retaliation for reporting. A variety of reporting channels are available: reports can be made to any manager, vice president, compliance officer, human resource, internal audit or legal personnel, and an anonymous reporting hotline. Anixter is in the process of establishing a web-based reporting system as well. This system has proven effective. Anixter's experience with its anonymous reporting hotline is that approximately 85% of calls are related to human resource issues, with the remainder primarily consisting of allegations of conflicts of interest.

The preponderance of calls related to human resource issues is common in many industries. Even though the vast majority of the employee reports are unrelated to the enforcement of the Federal securities laws, it is likely that some of these disgruntled employees, hoping to receive a sizable monetary award for reporting corporate malfeasance or obtain protection from adverse employment actions unrelated to reporting, will report their complaints to the Commission. We question whether serving as a *de facto* whistleblower hotline for every public company in the United States is an effective use of the Commission's time. Additionally, we are unsure of how the Commission will be able to effectively discern which reported violations are credible and which are not. We would recommend a vigorous complaint intake procedure be established by the Commission.

Further, we are concerned that the SEC has unintentionally created incentives for companies to dump all of these uninvestigated employee complaints on the Commission, as little upside remains for a company to spend the time and monetary resources to conduct the required investigation internally prior to reporting to the SEC. Immediate self-disclosure by a company may simply be a much cheaper option for the same likely result: the disclosure of the violation to the SEC.

## **III. If the Commission Does Not Require the Use of Internal Policies and Procedures, it Should Make Their Use a Specific Factor in Determining the Amount of Any Award.**

The Proposed Rules do not require a whistleblower to report any perceived violation internally through a company's established compliance process, nor do they mandate that the amount of award received by the whistleblower be based on the whether the whistleblower utilized a company's compliance program. The Proposed Rules list permissible

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<sup>2</sup> Statement of Commissioner Luis A. Aguilar, SEC Open Meeting (Nov. 3, 2010)

considerations in determining the amount of the award for the whistleblower, including whether, and the extent to which, a whistleblower reported the possible violation through effective internal whistleblower, legal or compliance procedures prior to reporting the violation to the SEC; however, this consideration is not a requirement for an award above the 10% threshold set forth in the Proposed Rules. Whistleblowers will not be automatically penalized by a reduced reward if they do not report internally through a company's established compliance program. Anixter does not believe that this is sufficient. The Commission should add the use of internal procedures to Proposed Rules 21F-6's list of the specific factors to be used in determining the amount of awards, as well as consider the effects of capping awards to whistleblowers who fail to report to an internal compliance program to the statutory 10% minimum.

#### **IV. The Proposed Rules Hinder the Ability of Companies to Adequately Respond to Claims.**

Finally, a significant concern with the Proposed Rules is that they do not require the SEC to notify a company when it is the subject of a whistleblower complaint. If the Commission chooses to disregard the arguments made above and does not require whistleblowers to use a company's internal procedures first or simultaneously with a report to the Commission, then it is absolutely essential for the Commission to provide companies with information regarding such claims, in all cases, as early as possible, in order to allow the company to address problems before they expand and before a formal proceeding is commenced. Complaints lodged with the commission which are not promptly reported to a company may result in additional and ongoing harm to that company and its shareholders if the circumstances which are the basis for the complaint remains undetected by the company. Additionally, once proceedings are commenced, there is a significant possibility that a company can suffer reputational and economic damage as a result of required disclosures in its financial statements or otherwise.

Additionally, the Commission should provide companies with a sufficient time to fully assess and investigate such claims. Anixter disagrees with the 90-day timeframe to respond to internal complaints set forth in the Proposed Rules. The necessary time period for responding to claims varies based on the nature and complexity of the complaint, the location of the persons or business installations involved, and many other factors. Instead of a mandatory 90-day deadline, the SEC could maintain the time limit as a "default" to protect whistleblowers in situations where the company fails to take any action, but provide for "tolling" of the period if the company responds to the whistleblower with an attestation that it is in the process of investigating the complaint, that the investigation is continuing, and that the company will respond to the whistleblower in writing upon completion of the investigation. That way, if another whistleblower were to bring information regarding the same alleged wrongdoing to the attention of the SEC, or if the SEC were to become aware of the matter through other means, the whistleblower's place in line would remain protected.

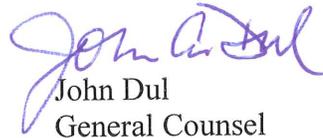
We fully believe in the necessary and important role that internal corporate programs play in promoting compliance with securities and other laws. Effective compliance programs

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involve the expenditure of significant time and money; however, the Proposed Rules, as currently drafted, make such programs seemingly pointless. We respectfully suggest that you consider the proposed changes set forth above which facilitate the Commission's goal of developing a strong and effective whistleblower awards program while at the same time creating incentives for companies to develop or maintain robust corporate compliance programs.

We thank you for the opportunity to comment on the Proposed Rules, and welcome the opportunity to answer questions or discuss the contents with you further.

Sincerely,



John Dul  
General Counsel