

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States

Chris Barnard

21 November 2010

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

Dear Sir,

Thank you for giving us the opportunity to comment on your “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934”.

I entirely support the main proposals which would implement Section 21F of the Securities Exchange Act of 1934 (“Exchange Act”) as follows:

- the Commission would pay an award to eligible whistleblowers who voluntarily provide original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action.
- It would also prohibit retaliation by employers against individuals that provide the Commission with information about potential securities violations.

Both of the main proposals are critical, the latter, for example, providing a far stronger protection for whistleblowers compared with existing Sarbanes-Oxley protections¹ in the context of financial reporting. I do accept that the proposed rules could have reduced the effectiveness of a company’s existing governance function, including its compliance, legal, audit, risk management and similar internal processes for investigating and responding to potential federal securities laws violations, but the proposals cleverly incentivise whistleblowers to go through internal compliance functions first, where possible.

¹ E.g. see section 806 Sarbanes-Oxley Act. Generally the burden of proof lies with the whistleblower here.

I specifically commend the SEC on the following aspects of the proposed rules:

- the proposed rules encourage whistleblowing in good faith, regardless of outcome
- the proposals focus on “original information”, rather than source of information
- non-employees can be whistleblowers
- the SEC will consider higher awards to whistleblowers who go through internal compliance functions before reporting to the SEC
- whistleblowers involved in misconduct cannot obtain awards
- the SEC can communicate directly with whistleblowers without any prior consent of the company involved

Given the comprehensive nature of the proposed rules, I would expect companies to begin reviewing their internal compliance functions and procedures, enhancing them where inadequacies are discovered. This would itself be a positive outcome.

In response to your specific request for comment I would add the following:

1. I agree with your reference to “by another person”.
2. I agree that Proposed Rule 21F-4(a)(1) appropriately defines the circumstances when a whistleblower should be considered to have acted “voluntarily”.
3. Yes, the proposed exclusions are appropriate.
5. Yes, this is an appropriate result.
6. The exclusion set forth in Proposed Rule 21F-4(a)(2) for information provided pursuant to a pre-existing legal or contractual duty to report violations is appropriate.
7. It is appropriate to include knowledge that is not direct, first-hand knowledge.
9. I would exclude information obtained through physician-patient privileges.
11. No.
13. I agree with the proposals here.
14. The proposed exclusion for information obtained by a violation of federal or state criminal law is appropriate.
18. Whistleblowers should not be required to utilise employer-sponsored complaint and reporting procedures, rather incentivised.
19. No. If anything, the proposed rules will pressure companies to enhance their existing internal compliance functions and processes.
20. Yes.
21. Yes, in order to mitigate speculative and frivolous complaints.
22. This should be dealt with on a case-by-case basis.
23. The proposed definition of the word “action” is appropriate.
- 24 (p.47). Yes.
- 25 (p.47). Yes.
- 24 (p.48). Yes.
27. The Commission should have discretion here.
28. The role and culpability of the whistleblower in the unlawful conduct should be an express criterion that would result in reducing the amount of an award within the statutorily-required range.
29. No.
30. Yes.
31. No.
32. I would encourage any method of submission.
34. Yes, an attorney for an anonymous whistleblower should have to verify the whistleblower’s identity and eligibility for an award.

Please note that the comments expressed herein are solely my personal views

38. Yes, monetary sanctions ordered against an entity whose liability is based substantially on conduct that the whistleblower directed, planned, or initiated should be excluded from the \$1,000,000 threshold.

42. The anti-retaliation protections set forth in Section 21F(h)(1) of the Exchange Act should apply to any person who provides information, in good faith, to the Commission concerning a potential violation of the securities laws.

Yours faithfully

Chris Barnard