

December 17, 2010

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

Response e-mailed to rule-comments@sec.gov

RE: Response to the Securities and Exchange Commission – Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. File Number S7-33-10

Dear Ms. Murphy:

The Institute of Internal Auditors (IIA) welcomes the opportunity to respond to the Securities and Exchange Commission's (SEC) proposed rules. Our comments are based on a thorough analysis and discussion, utilizing a core team of governance, compliance, and audit experts who serve on The IIA's Professional Issues Committee and Standards Board. These individuals consist of business leaders, Certified Public Accountants, Certified Internal Auditors, and Chief Audit Executives who have worked in both public accounting and management positions across small, medium, and large domestic and multinational companies.

These rules are extremely important to The IIA. They will have a tremendous impact on the manner in which internal whistleblower programs operate and the ability of both the SEC and registrant companies to identify, assess, report, and remediate valid violations of securities laws. We applaud the SEC's drafting of these rules and the efforts undertaken to balance the various interests of investors, whistleblowers, companies, and the SEC.

The following are our principal comments and observations. Detailed responses to the questions posed in the proposed rules document, and other matters related to specific questions, can be found in Attachment A.

1. We recommend that the Commission take every effort to encourage, support, and strengthen effective processes within companies to:
 - a) solicit reporting of fraudulent activities,
 - b) aggressively investigate suspected fraudulent activities,
 - c) remediate such activities and self-disclose them to the Commission as appropriate, and
 - d) protect and champion internal whistleblowers.

It is important that the proposed rules do not interfere with nor undermine the effectiveness of internal whistleblower processes that are operating in good faith to comply with existing regulations. The Commission's ability to use only its own resources to solicit, investigate, and identify fraudulent activities across all registrant companies will be limited even under the best circumstances. Governance structures and compliance programs are best implemented by the companies themselves. Only through the establishment of comprehensive and effective internal processes by registrant companies will the Commission be able to ensure that investors are protected.


2. We recommend that the Commission amend the proposed rules to explicitly require that whistleblowers have first utilized their company's internal reporting process – or demonstrated to the Commission's satisfaction that such a process was non-existent or ineffective – in order to be eligible for receiving any award. To balance such a rule, the Commission should consider amending the proposed rules or other Commission rules as appropriate, to take into account the company's adherence to various anti-retaliation rules and cooperation with the SEC when determining fines.
 - a. Specifically, we recommend that "21F-6 Criteria for Determining Amount of Award" include a provision to eliminate or reduce the award significantly if the individual failed to use the entity's internal reporting process unless the individual can show just cause to believe that the entity's internal reporting process was non-existent or ineffective. To further support internal reporting, the Commission should also consider increasing awards whenever whistleblowers demonstrate that they have suffered retaliation as a result of their good faith internal reporting of an allegation.
3. We recommend that the Commission amend the proposed rules to explicitly reduce awards if the whistleblower does not report suspected fraudulent activity via internal company process in a timely manner.
 - a. Specifically, we recommend that "21F-6 Criteria for Determining Amount of Award" include a provision to reduce the award significantly if the whistleblower knew of fraudulent conduct for an extended period of time and failed to report such conduct via the company's internal processes.
4. We recommend that the Commission amend the proposed rule to explicitly deny any award to a whistleblower that reports to the Commission in those instances where – to the Commission's satisfaction – the company identified the fraudulent activity, investigated thoroughly the fraudulent activity, and properly communicated with the Commission or other appropriate regulatory body.
 - a. In this instance, identification of the fraudulent activity would require the whistleblower to have reported the matter internally via the company's internal processes.
 - b. The whistleblower's "spot in line" for any award in those circumstances where the company did not act appropriately would be based upon the whistleblower's documentation of reporting the allegation via internal company processes.

- c. By explicitly denying a whistleblower award when the company acts appropriately, the Commission will:
 - i. encourage implementation of effective internal self-reporting and investigation programs,
 - ii. encourage employees' use of those internal programs, and
 - iii. clearly define a whistleblower as those who inform the Commission of fraudulent activity that is not addressed appropriately by a company's internal process versus those who are simply first to inform the Commission of any allegation.

- 5. We recommend that the Commission amend the proposed rules to explicitly allow any company official to participate in the whistleblower award if they demonstrate to the Commission that a higher governance authority acted in bad faith regarding the allegation.
 - a. A compliance official (or any other official normally involved in compliance, ethics, audit, or governance roles) should be eligible for an award if the company improperly handled the matter including circumstances where a higher governance authority inappropriately directed the compliance officer not to handle the matter properly. Such consideration could even be extended to a Board member who is overruled by a majority of the Board.

The IIA welcomes the opportunity to discuss any of these recommendations with you. We offer our assistance to the SEC in the continued development of these rules.

Best Regards,



Richard F. Chambers, CIA, CGAP, CCSA
President and Chief Executive Officer

About The Institute of Internal Auditors

The IIA is the global voice, acknowledged leader, principal educator, and recognized authority of the internal audit profession and maintains the *International Standards for the Professional Practice of Internal Auditing (Standards)*. These principles-based standards are recognized globally and are available in 29 languages. The IIA represents more than 170,000 members across the globe and has 103 affiliates in 165 countries that serve members at the local level.