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December 29, 2010

Via e-mail to: rule-comments@sec.gov

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

Re: File No. S7-33-10
Release No. 34-63237
Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen:

This letter is submitted to express strong support for the excellent comments made by the Association of Corporate Counsel and the leading in-house legal executives joining in those comments (collectively, the "Corporate Counsel") in their December 15, 2010 letter to the U.S. Securities and Exchange Commission (the "Commission"). The Corporate Counsel's letter was submitted in response to the request by the Commission for comments in the proposing release referenced above (the "Proposing Release"), in which the Commission has proposed rules for implementing the whistleblower provisions of new Section 21F of the Securities Exchange Act of 1934, as amended. This letter is also submitted to provide the Commission with supplemental comments with respect to the Proposing Release and the proposed rules set forth therein.

The whistleblower provisions create an important tool that may help the Commission detect and prevent securities violations. The Proposing Release also sets forth many thoughtful proposals to implement the whistleblower provisions and we applaud the Commission for these efforts. However, there should be more safeguards to ensure that the whistleblower provisions are not misused or abused, and the procedures for filing a whistleblower claim should be structured to further deter false or spurious claims. Otherwise, the Commission will be inundated with many false or spurious claims.

These modifications are warranted because the cost-benefit analysis in the Proposing Release fails to take into account all of the likely costs of the proposed rules. Because the anti-retaliation protection provided by the whistleblower provisions is very broad and excludes only a very limited class of claimants, employees who either fear termination by their employer because of a poor performance review or misconduct, or seek large financial gains (or both) have a powerful incentive to make false or spurious whistleblower claims in an effort to obtain that protection and deter their employers from taking otherwise justified adverse action against them.

Although it is not possible to quantify the level of false or spurious claims that are likely to be filed, we believe the percentage would be very high. And if that is the case, we also believe that the annual costs to innocent companies and individuals could reach hundreds of millions of dollars due to investigations triggered by false or spurious claims and the high volume of documentation that these innocent companies and individuals would need to review and produce, often with the assistance of legal counsel and accounting firms. The Commission itself would also incur significant costs to review and evaluate all of these false or spurious claims and would need to divert its limited resources from higher priorities and legitimate claims. Such false or spurious claims can also lead to the wrongful public disparagement of innocent companies and individuals with damaging results to such innocent companies and individuals.

To avoid this result, potential whistleblowers need to be disabused of the notion that the whistleblower provisions are a free lottery ticket to large monetary recoveries with no downside risk to them where the claims are false or spurious. As a result, stronger safeguards should be adopted to prevent improper use of the whistleblower provisions. We have the following suggestions for your consideration to achieve this result.

First, if documents are delivered directly to the Commission, Form TCR should be subject to penalty of perjury, similar to Form WB-DEC. If a whistleblower utilizes an attorney, then the Form TCR with such sworn declaration should be retained by the attorney, and such Form TCR should also be required to be produced to the Commission if the Commission believes that the claim is false or spurious.

In this regard, we respectfully disagree with the Commission's argument (in the cost-benefit analysis in the Proposing Release) that making Form WB-DEC alone subject to penalty of perjury is sufficient to "mitigate the potential harm to companies and individuals that may be caused by false or spurious allegations of wrongdoing." Because Form WB-DEC can be submitted up to 30 days after Form TCR, claimants can cause significant resources to be expended by filing a Form TCR with a false or spurious claim if the Commission thought that the allegations warranted immediate investigation. Claimants could also fail to file a Form WB-DEC or change their stories before filing it. Claimants might not read Form WB-DEC before filing Form TCR and might not realize that they later have to swear to its accuracy under penalty of perjury. Therefore, Form TCR itself should be subject to penalty of perjury so that whistleblowers are definitely aware from the beginning that dishonest claims carry significant risks.

In addition, attorneys who assist clients in submitting anonymous claims should have special responsibilities. The ethics rules in most jurisdictions already prevent attorneys from filing false or spurious claims, but those rules should be explicitly restated with respect to whistleblower claims. Attorneys handling anonymous claims should be required to review the client's information and certify to the Commission that the client can show *particularized* facts

suggesting a *reasonable probability* that a securities violation has actually occurred or is occurring. (Existing Counsel Certification and other applicable forms should also be modified to reflect these requirements.) This will ensure that whistleblowers who engage legal counsel do not submit claims based on mere speculation or hunches or with fabricated or distorted facts. Additionally, while lay individuals may not have the necessary level of knowledge and sophistication to know whether their information truly evidences a securities violation, attorneys are capable of making that determination and, therefore, should be required to help screen unsubstantiated claims. This would avoid the incurrence of unnecessary costs and labor by the Commission and innocent companies and individuals.

We also believe that the phrase "potential violation" in the proposed regulations would be interpreted very broadly by purported claimants and their counsel and substantially increase the likelihood of false or spurious claims. The word "potential" is defined in the Merriam-Webster dictionary as "existing in possibility : capable of development into actuality." Therefore, the phrase "potential violation" is likely to be interpreted to include securities violations that have not even occurred yet or suspicions of violations that are speculative at best or have very little or no factual or legal support.

The provisions of Section 21F of the Securities Exchange Act of 1934, as amended, do not utilize the term "potential violation" or otherwise provide any definition of the term "violation". Furthermore, we have found no legislative history with respect to Section 21F that refers to "potential violations" or that suggests that the word "potential" should be utilized in conjunction with the term "violation".

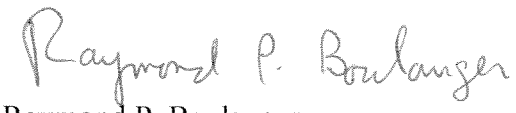
While we understand that the Commission does not wish to deter legitimate claims of violations of the securities laws, we believe that the word "potential" is inappropriate and will result in a significant number of false or spurious claims. Thus, we respectfully suggest using the phrase "probable violation" or "likely violation" instead of "potential violation" in the rules. In this regard, the Merriam-Webster dictionary defines the word "probable" to mean "likely to become true or real". Using the phrase "probable violation" or "likely violation" would suggest that there must be some reasonable likelihood of a violation of securities laws when a claimant submits a whistleblower claim and further undercuts the notion to potential claimants that the whistleblower provisions are a free lottery ticket to large monetary recoveries, even if the claim is false or spurious. This would still address the Commission's concerns that legitimate claims should not be deterred, but either of the suggested formulations should also assist in reducing the number of false or spurious claims and the associated significant costs and harm imposed on innocent companies and individuals as a result of such false or spurious claims.

Finally, the Commission should consider additional ways to safeguard against abuse of the whistleblower provisions and ensure the utmost integrity in the process for whistleblowers to

submit tips. The goal should be to ensure that precautions are taken at each step to screen out claims that are false or spurious for the reasons discussed above.

Again, the Commission has done an outstanding job thus far, and we submit these comments for your review in the hope that they may provide some assistance in protecting innocent companies and individuals from false or spurious claims but without undercutting the detection and prevention of securities violations. Thank you very much for your time and attention.

Very truly yours,



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