

MEMORANDUM

To: File No. S7-33-10

From: Sarit Klein
Counsel to the Director, Division of Enforcement

Date: February 9, 2011

Re: Proposed Rules for Implementing the Whistleblower Provisions
of Section 21F of the Securities Exchange Act of 1934

On February 9, 2011, Sarit Klein, Jordan Thomas, William Shirey and Thomas Karr of the Securities and Exchange Commission met with Stuart D. Meissner, Esq. to discuss the Commission's proposed rules implementing the whistleblower provisions of Section 21F of the Securities Exchange Act of 1934. The specific areas discussed during the meeting are reflected in the attached agenda.

AGENDA

Dodd–Frank Wall Street Reform and Consumer Protection Act, §21 F Whistleblower Provision

Stuart D. Meissner, Esq.

February 9, 2011

**AGENDA FOR STUART D. MEISSNER ESQ. MEETING WITH SEC
REGARDING THE NEWLY PROPOSED SECTION 21F WHISTLEBLOWER
PROVISIONS OF THE DODD FRANK ACT ("ACT")**

- 1) **Proposed Rules Are Not "User Friendly" as Mandated By Congress.**
- 2) **Rule Proposal Which May Completely Eviscerate The Dodd/Frank Whistleblower Law With Regard to All Current and Future Employees of Businesses.**
- 3) **Lack of User Friendliness Related to Proposed Rules Which Prohibits Key Personnel in Legal, Compliance, Audit, Supervisory, or Governance Responsibilities, Who Would Most Likely Be Aware of Wrongdoing, from Recovering Unless He/She is Able to Determine that, After the Whistleblower Responded "Appropriately" to the Wrongdoing, the Violations Were Not Reported by the Company to the SEC and "Reasonable Time" has Passed or That the Company Acted in "Bad Faith". (Proposed Rule 21F-4(b)(4), Pages 4, 24-27, 36, 106-107, 129, 130).**
- 4) **21F-2 Definition of Whistleblower Suggestion.**
- 5) **Payment of Award - Unclear Guidance With Respect to Payment of Bounty as a Result of Collateral Regulatory or Law Enforcement Action Due to the Whistleblower's Information and Assistance (Rule 21F-3, See Pages 3, 8-9, 44, 48).**
- 6) **21F(b)(1) (P. 11) and 21F-4(a)(1) (P.12) Definition of "Voluntary Submission" and Lack of Rules Which Encourage and Protect the Whistleblower Consistent with Dodd Frank.**
- 7) **Proposed Rules Improperly Legislates By Adding to the Short List of Categories of People Who Congress Specifically Identified As Not Being Eligible For Whistleblower Awards.**
 - a) **P. 128 - Definition of "Administrative Hearing" In Relation to Defining "Original Information" – No Historic Basis and Contrary to the Goals of Dodd-Frank.**
 - b) **Issue - Prohibiting information that was derivative of "attorney client privilege" and from an entity's "legal, compliance, audit or other similar functions", unless the entity did not disclose such to the Commission within a reasonable time or proceeded in bad faith (P.129, 130).**
 - c) **Issue - Prohibiting the provision of information derived "by a means of in a manner that violates applicable federal or state criminal law" p.130.**

- 8) Proposed Rules Obsessive Focus on Absurd Overblown Fears And At the Same Time Fails to Address Almost All Legitimate Concerns Of Whistleblowers, Which Concerns Were Provided to the SEC Staff Prior to The Rule Proposals.
 - a) Proposed rules indicate that multiple SEC actions arising from the whistleblower action but involving the same subject matter or people, will not be aggregated so as to account for the one million dollar threshold.
- 9) Proposed Rules Regarding Whistleblowers Counsel Conflict With Current SEC Rules and Guidance and Would Inhibit the Ability of Whistleblowers from Even Retaining Qualified Counsel. Also Such May Interfere With Significant Ongoing SEC/Regulatory/Prosecutorial Investigations Which Resulted from the Legislation.
- 10) While Addressing Concerns Over the Cost of "Postage" (p.116) to the Whistleblower in Submitting Three Forms, the "Overflow of Noisy Signals" (P.113) and Private Attorney Fee Arrangements of the Whistleblowers (P.55), None of the 180 Pages of Rules Make a Single Solitary Mention to "FINRA," Despite FINRA Being Purportedly Supervised By The SEC and it Being the Prime Regulatory Body and Dispute Resolution Forum For All Brokerage/Investment Banking Institutions, As Well As All Registered Representatives and Supervisors Within Such Institutions.
- 11) Lack of Rules Suggesting the Modification of the SEC's Own "Enforcement Manual" dated January 13, 2010, Significantly and Immediately Impacting Upon the Success of the Statute.
- 12) Lack of Rules Providing for Updates to Whistleblowers.
- 13) Lack of Rules Relating to the Revolving Door at the SEC and the Need to Propose Related Rules to Promote and Provide Comfort to Whistleblowers.
- 14) Apparent Faulty Premise of the Proposed Rules.