



NASAA

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

RE: NASAA Comment Letter in Response to SEC Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. SEC Release No. 34-63237; File No. S7-33-10

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. (NASAA) submits the following comments in response to Release No. 34-63237 (File No. S7-33-10) (“Release”). This Release explains how the Securities and Exchange Commission (“SEC” or “Commission”) intends to implement the whistleblower provisions of Section 21F of the Securities and Exchange Act of 1934 (“Whistleblower Provisions”) that were enacted on July 21, 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

In general, NASAA fully supports the Commission’s approach to implementation of the Whistleblower Provisions as outlined in the Release. The one area where NASAA would ask that the SEC consider modifying the proposed rule is with respect to Request for Comment No. 17 in the Release. Here the Release seeks comment on whether “the 90-day deadline for submitting Forms TCR and WB-DEC to the Commission (after initially providing information about violations or potential violations to another authority or the employer’s legal, compliance, or audit personnel)” is the appropriate time period. Specifically, NASAA is concerned with how the 90-day deadline would be applied in the context of a whistleblower who initially brings original information to a state securities regulator if that state securities regulator ultimately refers the resulting case to the SEC.

There are many circumstances where a referral to the SEC from a state securities regulator may not occur until well after the 90-day deadline is past. When a whistleblower brings original information of a violation to a state securities regulator, it may not initially be apparent that the case would be appropriate for referral to the SEC. However, as the investigation by the state securities agency proceeds, additional details (such as additional victims in multiple states, or scope of the violations) may make a referral to the SEC the most appropriate course of action. It is also possible that after opening an investigation based on the whistleblower’s information that the state securities regulator may discover that the SEC has already started a similar investigation against the same target or related targets, and that a referral to the SEC is appropriate. If this referral is made more than 90-days after the whistleblower first brought the information to the state securities regulator, it would seem unfair to preclude the

whistleblower from applying for an award under the Whistleblower Provisions based solely on circumstances completely outside of the whistleblower's control.

Request for Comment No. 17 of the Release specifically asks, "Should there be different time frames for disclosures to other authorities and disclosures to an employer's legal, compliance or audit personnel?" NASAA believes that in the case of referrals from a state securities regulator to the SEC, a different formula for calculating the deadline for the whistleblower to submit Forms TCR and WB-DEC to the Commission is needed. NASAA believes it would be more appropriate to calculate the 90-day deadline from the time the state securities agency refers the matter to the SEC rather than from the date the whistleblower first provides the original information to the "other authority" (the state securities regulator in this instance).

This change in the formula for calculating the deadline would prevent seemingly arbitrary exclusions from eligibility for whistleblower awards that would otherwise result from the proposed language of the rule. Under the currently proposed rule, a whistleblower who brings original information to a state securities regulator faces two possible scenarios if the case is ultimately referred to the SEC and the information from the whistleblower leads to a successful enforcement action by the SEC. First, if the case is referred to the SEC in less than 90 days, the whistleblower will be eligible to apply for an award so long as the whistleblower submits Forms TCR and WB-DEC to the Commission within the remaining 90-day window. Second, if the case is referred to the SEC more than 90 days after the whistleblower contacts the state securities regulator (due to factors totally outside the control of the whistleblower), the whistleblower will be automatically ineligible for any award from the Commission, regardless of the outcome of the case or the value of the whistleblower's information. This discrepancy appears to be arbitrary.

To avoid this arbitrary distinction in the treatment of whistleblowers who provide information to state securities regulators, NASAA recommends that the Commission modify the proposed language of Rule 21F-4(b)(7). Specifically, NASAA recommends that in cases where original information from a whistleblower is referred from a state securities regulator, the 90-day deadline for a whistleblower application to the Commission should begin to run from the date of the referral from the state securities regulator rather than from the date the whistleblower initially provided the information to the state securities regulator.

Should you have any questions regarding the comments expressed herein, please feel free to contact either me or Keith Woodwell, Utah Securities Division Director and Vice-Chair of NASAA's Enforcement Section.

Yours,

A handwritten signature in black ink that reads "David S. Massey". The signature is fluid and cursive, with a long horizontal flourish at the bottom.

David S. Massey
North Carolina Deputy Securities Administrator
NASAA President