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Michael A. Sullivan

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December 17, 2010

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

Re: Comments on Proposed Rules for Implementing the Whistleblower Provisions of
Section 21F of the Securities Exchange Act of 1934
File No. SF-33-10

Dear Ms. Murphy:

This letter is submitted in response to the request of the Securities and Exchange Commission for comments concerning the proposed rules for implementing the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

I am a former federal prosecutor and now am a private attorney who has worked with the nation's major "whistleblower" law, the False Claims Act, since the late 1980s. I have both prosecuted and defended whistleblower cases under the False Claims Act. Since the beginning of the new IRS Whistleblower Program authorized in December 2006, I have also represented IRS whistleblowers and have worked with the IRS Whistleblower Office staff in presenting programs on the "best practices" in pursuing whistleblower claims. I now also represent whistleblowers with claims in the SEC Whistleblower Program.

1. The guiding principle for the new SEC Whistleblower rules should be to follow the "tried and true" aspects of the False Claims Act, which has been dramatically successful in detecting and remedying fraud. Since the False Claims Act was amended in 1986, it has led to \$27 billion in recoveries of taxpayer dollars,¹ and has produced a well-developed body of law to govern how whistleblower claims should proceed effectively.

¹ See Department of Justice statistics reported at <http://www.justice.gov/opa/pr/2010/November/10-civ-1335.html>.

Following that principle of implementing what has worked well for 24 years with the False Claims Act, the new IRS Whistleblower Program has already attracted many tax whistleblowers with significant claims totaling many billions of dollars. While the IRS Whistleblower Program is by no means identical to the False Claims Act procedures, IRS whistleblowers similarly are encouraged to come forward, without a host of possible exclusions and exceptions that create doubt over whether the whistleblower's claim will be rejected, even if the information results in a significant recovery.

The proposed SEC rules show considerable thought, but offer no sound reason for their dramatic deviation from what has worked so well over two decades in False Claims Act cases.

Instead, the proposed rules would create an unnecessary, counterproductive, and complex series of exclusions, which for good reasons are not found in the existing, highly successful whistleblower programs under the False Claims Act and IRS whistleblower statute. Those programs should be the models for the SEC.

In Dodd-Frank, Congress considered – and rejected – excluding from the SEC Whistleblower Program many categories of persons whom the proposed rules would exclude. To illustrate, Dodd-Frank excluded rewards "to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1)." 15 USC 78u-6(c)(2) (emphasis supplied).

The proposed Rules contradict the statute by adding far broader exclusions rejected by Congress.² The result will be uncertainty, excessive litigation over the meaning of these exclusions, greater delays than under existing whistleblower programs, additional costs, and ultimately the defeat of the very purpose of the statute. Too many honest persons in the best position to stop major frauds that continue to plague investors will not come forward under these proposed rules.

In short, while the new proposed SEC whistleblower rules show much analysis, they would negate the program's effectiveness by excluding many potential whistleblowers who may be the best position to stop the next Madoff.

2. In addition, the SEC has requested comment on one industry proposal that would be lethal to an effective whistleblower program. That proposal would require potential whistleblowers first to run the gauntlet of firms' "compliance" programs—a concept wholly inconsistent with Congress' intent that whistleblowers must be allowed to report violations *anonymously*.

² See Comments submitted by Taxpayers Against Fraud on December 17, 2010, discussing these proposed exclusions.

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To put it in context, the November 20, 2010 *Wall Street Journal* reported a "sweeping" insider trading investigation, with civil and criminal charges soon to follow, involving "consultants, investment bankers, hedge-fund and mutual-fund traders, and analysts across the nation." Without prejudging those cases, the unending series of past and current fraud cases that continue despite Sarbanes-Oxley proves why potential defendants must not be allowed to neuter the first potentially meaningful SEC whistleblower program. How is it that the hallowed "compliance programs" created since Sarbanes-Oxley have utterly failed to stop the breathtaking frauds of Madoff, Stanford, and other recent post-SOX scandals?

As many honest employees encountering fraud discover, too often "compliance programs" mask efforts to identify employees who object to wrongdoing, so the wrongdoers can then end those employees' careers.

The initial screening of SEC whistleblower claims should not be "outsourced" to the very firms alleged to have violated the law, which is what mandatory internal reporting effectively would do. The SEC – like the Department of Justice and IRS – should be the first to screen SEC whistleblower claims.

Otherwise, who in a position to expose significant fraud would come forward, if required first to reveal their objections to the fraud to those who may have approved it? And if the fraud stays concealed – as it too often has despite "compliance" programs – the public loses.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Sullivan".

Michael A. Sullivan

MAS:sp