



December 17, 2010

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

**Re: File Number S7-33-10 -- Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934**

Dear Ms. Murphy:

The Ethics Resource Center (ERC), the United States' oldest nonprofit organization devoted to the advancement of high ethical standards and practices in public and private institutions, is pleased to provide the Securities and Exchange Commission with its perspective on the proposed rules for implementing the new whistleblower provisions enacted in July 2010 as part of the Dodd-Frank Act. Since 1922, ERC has been a resource for organizations committed to strong ethical cultures.

In particular, ERC conducts independent research to help inform the public dialogue on ethics and ethical behavior. We believe that fact-based analysis is an essential element of effective regulation. In that spirit, we are pleased to share our new report "Blowing the Whistle on Workplace Misconduct," which provides insights into which employees are most likely to blow the whistle on misconduct, what type of behavior they are more or less likely to report, and to whom they tend to report their concerns. It also highlights the impact of corporate culture on both employee conduct and reporting activity, and finds that employees are more likely to report misconduct in companies with strong ethical cultures. We believe this paper may assist the SEC and other interested parties in the development of final rules and implementation of the new whistleblower provisions of Section 21 F.

In addition, we wish to share a few general observations:

The creation of a monetary reward fund for tips leading to a successful enforcement action under U.S. securities laws is designed to protect investors and the public as a whole from the painful effects of securities-related frauds. By creating an incentive for voluntary reporting by those with knowledge of such frauds, the reward fund aims to discourage misconduct by increasing the odds that violators will be identified and successfully prosecuted. In achieving that end, the fund also should support the

effectiveness of U.S. capital markets by increasing public confidence in their integrity. The ERC strongly supports these objectives.

The ERC also believes that prevention is even better than punishment, and that the soundest and most fundamental long-term strategy for discouraging misconduct is the development of strong ethical cultures and the implementation of effective Ethics & Compliance (E&C) programs in business organizations and other private and public institutions. In our experience, institutions with committed leadership and effective E&C programs can build strong ethical cultures that encourage employees to report misconduct and reduce lawbreaking and other wrongful behavior.

Our review of the proposed rules has focused on the potential impact of the reward fund on corporate E&C programs and other voluntary efforts to build strong ethical cultures. We note the concern of other commentators that the proposed rules may incentivize employees with knowledge of misconduct to ignore internal processes for addressing possible bad behavior. That's important because, in the long run, strong E&C programs backed by senior leadership with a strong commitment to ethical conduct are the best way to prevent misconduct.

While employees certainly should assist government enforcement, going outside the organization as an *initial* step can potentially block organizations from identifying weaknesses in internal safeguards and deprive their leadership of an opportunity to make needed adjustments to E&C programs. In our experience, internal communication about ethics and compliance, including the opportunity for institutional leaders to build confidence by an aggressive response to bad behavior, is an invaluable opportunity to enhance ethical culture and make clear that acting with integrity is a core job responsibility for every employee.

To its credit, the SEC has noted the possible tension between the reward fund and internal company processes for responding to misconduct and says that the rules include provisions "intended not to discourage" whistleblowers from reporting violations internally at companies with robust E&C programs.

We respectfully submit that rules for the reward fund should be designed to support E&C programs by actively *encouraging* employees to initially work through their own institutions' processes. We urge the Commission to revisit the proposed rules and identify ways to build support for E&C programs and encourage whistleblowers to avail themselves of internal E&C reporting in addition to the whistleblowing provisions.

This is especially important because, as the Commission notes, the reward program applies only to violations of securities laws. Internal E&C programs must deal with a wide gamut of misconduct not covered by this proceeding. For example, one major company said in response to an ERC inquiry that it receives almost 5,200 calls to its ethics hotline a year, but that on average only two of these calls relate to possible

securities fraud. A second company informed us that during 2010 it has averaged 634 hotline reports a month, including a total of three that raised concerns about securities law issues. It would be unpardonable if a program designed to address the single area of securities law violations was to reduce the effectiveness of E&C efforts aimed at a wider range of issues.

The Commission correctly notes that whistleblowers should be protected against retaliation. The 2009 National Business Ethics Survey prepared by the ERC found that about 15 percent of employees who reported misconduct perceived some retaliation. Much of the payback was in the form of subtle snubs and abuse by co-workers and may not rise to the level of an actionable offense. In addition to legal action against corporate retaliation, the SEC should work *with* employers to develop strong E&C programs to discourage any type of retaliation by a whistleblower's co-workers and supervisors.

Finally, we believe that the Commission has an opportunity to support private E&C programs by detailed reporting on the results of the new whistleblowing provisions, the reward fund, and their impact on E&C programs. E&C officials consistently say that information about the impact of E&C programs on enforcement decisions, particularly when such programs have a mitigating effect on prosecutorial decisions, is critical to improving E&C programs. It also enables them to build internal budgetary support for enhancing internal compliance initiatives. We urge the SEC to commit to a strong reporting program that provides E&C officers the information they require to strengthen their own compliance work.

We wish to commend the SEC for its ongoing efforts to improve its enforcement of securities law and to successfully implement the new whistleblowing provisions. We are pleased that the proposed rules recognize the value of internal E&C programs and also the possible tension between those programs and the new monetary reward fund. We would be pleased to provide the SEC with any additional information, research or other assistance to support both this rulemaking and subsequent implementation of the whistleblowing provision.

Should you have questions or need additional information, please do not hesitate to contact me at 703-647-703-647-2185.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patricia J. Harned".

Patricia J. Harned, Ph.D.  
President