

December 17, 2010

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

Response e-mailed to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

RE: Response to the Securities and Exchange Commission – Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934. File Number S7-33-10

Dear Ms. Murphy:

The Institute of Internal Auditors (IIA) welcomes the opportunity to respond to the Securities and Exchange Commission's (SEC) proposed rules. Our comments are based on a thorough analysis and discussion, utilizing a core team of governance, compliance, and audit experts who serve on The IIA's Professional Issues Committee and Standards Board. These individuals consist of business leaders, Certified Public Accountants, Certified Internal Auditors, and Chief Audit Executives who have worked in both public accounting and management positions across small, medium, and large domestic and multinational companies.

These rules are extremely important to The IIA. They will have a tremendous impact on the manner in which internal whistleblower programs operate and the ability of both the SEC and registrant companies to identify, assess, report, and remediate valid violations of securities laws. We applaud the SEC's drafting of these rules and the efforts undertaken to balance the various interests of investors, whistleblowers, companies, and the SEC.

The following are our principal comments and observations. Detailed responses to the questions posed in the proposed rules document, and other matters related to specific questions, can be found in Attachment A.

1. We recommend that the Commission take every effort to encourage, support, and strengthen effective processes within companies to:
  - a) solicit reporting of fraudulent activities,
  - b) aggressively investigate suspected fraudulent activities,
  - c) remediate such activities and self-disclose them to the Commission as appropriate, and
  - d) protect and champion internal whistleblowers.

It is important that the proposed rules do not interfere with nor undermine the effectiveness of internal whistleblower processes that are operating in good faith to comply with existing regulations. The Commission's ability to use only its own resources to solicit, investigate, and identify fraudulent activities across all registrant companies will be limited even under the best circumstances. Governance structures and compliance programs are best implemented by the companies themselves. Only through the establishment of comprehensive and effective internal processes by registrant companies will the Commission be able to ensure that investors are protected.

2. We recommend that the Commission amend the proposed rules to explicitly require that whistleblowers have first utilized their company's internal reporting process – or demonstrated to the Commission's satisfaction that such a process was non-existent or ineffective – in order to be eligible for receiving any award. To balance such a rule, the Commission should consider amending the proposed rules or other Commission rules as appropriate, to take into account the company's adherence to various anti-retaliation rules and cooperation with the SEC when determining fines.
  - a. Specifically, we recommend that "21F-6 Criteria for Determining Amount of Award" include a provision to eliminate or reduce the award significantly if the individual failed to use the entity's internal reporting process unless the individual can show just cause to believe that the entity's internal reporting process was non-existent or ineffective. To further support internal reporting, the Commission should also consider increasing awards whenever whistleblowers demonstrate that they have suffered retaliation as a result of their good faith internal reporting of an allegation.
3. We recommend that the Commission amend the proposed rules to explicitly reduce awards if the whistleblower does not report suspected fraudulent activity via internal company process in a timely manner.
  - a. Specifically, we recommend that "21F-6 Criteria for Determining Amount of Award" include a provision to reduce the award significantly if the whistleblower knew of fraudulent conduct for an extended period of time and failed to report such conduct via the company's internal processes.
4. We recommend that the Commission amend the proposed rule to explicitly deny any award to a whistleblower that reports to the Commission in those instances where – to the Commission's satisfaction – the company identified the fraudulent activity, investigated thoroughly the fraudulent activity, and properly communicated with the Commission or other appropriate regulatory body.
  - a. In this instance, identification of the fraudulent activity would require the whistleblower to have reported the matter internally via the company's internal processes.
  - b. The whistleblower's "spot in line" for any award in those circumstances where the company did not act appropriately would be based upon the whistleblower's documentation of reporting the allegation via internal company processes.

- c. By explicitly denying a whistleblower award when the company acts appropriately, the Commission will:
  - i. encourage implementation of effective internal self-reporting and investigation programs,
  - ii. encourage employees' use of those internal programs, and
  - iii. clearly define a whistleblower as those who inform the Commission of fraudulent activity that is not addressed appropriately by a company's internal process versus those who are simply first to inform the Commission of any allegation.
  
- 5. We recommend that the Commission amend the proposed rules to explicitly allow any company official to participate in the whistleblower award if they demonstrate to the Commission that a higher governance authority acted in bad faith regarding the allegation.
  - a. A compliance official (or any other official normally involved in compliance, ethics, audit, or governance roles) should be eligible for an award if the company improperly handled the matter including circumstances where a higher governance authority inappropriately directed the compliance officer not to handle the matter properly. Such consideration could even be extended to a Board member who is overruled by a majority of the Board.

The IIA welcomes the opportunity to discuss any of these recommendations with you. We offer our assistance to the SEC in the continued development of these rules.

Best Regards,



Richard F. Chambers, CIA, CGAP, CCSA  
President and Chief Executive Officer

**About The Institute of Internal Auditors**

The IIA is the global voice, acknowledged leader, principal educator, and recognized authority of the internal audit profession and maintains the *International Standards for the Professional Practice of Internal Auditing (Standards)*. These principles-based standards are recognized globally and are available in 29 languages. The IIA represents more than 170,000 members across the globe and has 103 affiliates in 165 countries that serve members at the local level.

Attachment A  
Institute of Internal Auditors (IIA)  
Response to the Securities and Exchange Commission – Proposed Rules for Implementing the Whistleblower  
Provisions of Section 21F of the Securities Exchange Act of 1934  
File Number S7-33-10

Questions from the proposed rules and the IIA's responses.

1. In other provisions of these Proposed Rules - e.g., Proposed Rule 21F-15 - we propose that whistleblowers not be paid awards based on monetary sanctions arising from their own misconduct, based on the notion that the statute is not intended to reward persons for blowing the whistle on their own misconduct. Consistent with this approach, should we define the term "whistleblower" to expressly state that it is an individual who provides information about potential violations of the securities laws "by another person"?

*Yes.*

2. Does Proposed Rule 21F-4(a)(1) appropriately define the circumstances when a whistleblower should be considered to have acted "voluntarily" in providing information about securities law violations to the Commission? Are there other circumstances not clearly included that should be in the rule?

*Yes. No other circumstances come to mind.*

3. Should the Commission exclude from the definition of "voluntarily" situations where the information was received from a whistleblower after he received a request, inquiry, or demand from a foreign regulatory authority, law enforcement organization or self-regulatory organization? Similarly, should the Commission exclude from the definition of "voluntarily" situations where the information was received from a whistleblower where the individual was under a pre-existing legal duty to report the information to a foreign regulatory authority, law enforcement organization or self-regulatory organization?

*Yes and Yes.*

4. Is it appropriate for the proposed rule to consider a request or inquiry directed to an employer to be directed at individual employees who possess the documents or other information that is within the scope of the request? Should the class of persons who are covered by this rule be narrowed or expanded? Will the carve-out that permits such an employee to become a whistleblower if the employer fails to disclose the information the employee provided in a timely manner promote compliance with the law and the effective operation of Section 21F?

*Yes; The class should expand to include third parties, such as contractors, agents, service providers; Yes.*

5. The standard described in Proposed Rule 21F-4(a)(1) would credit an individual with acting "voluntarily" in certain circumstances where the individual was aware of fraudulent conduct for an extended period of time, but chose not to come forward as a whistleblower until after he became aware of a governmental investigation or examination (such as by observing document requests being served on his employer or colleagues, but before he received an inquiry, request, or demand himself, assuming that he was not within the scope of an inquiry directed to his employer). Is this an appropriate result, and, if not, how should the proposed rule be modified to account for it?

*As a matter of principle, the Commission should not reward individuals who knew of fraudulent conduct and failed to report such conduct. However, these individuals could have useful information to help the Commission bring investigations to a successful conclusion. Therefore, instead of completely excluding these individuals from receiving an award, “21F-6 Criteria for Determining Amount of Award” should include a provision to reduce the award significantly if the individual knew of the fraudulent conduct for an extended period of time and failed to report such conduct via the company’s internal process. The award amount should also depend on the value of the information provided.*

6. Is the exclusion set forth in Proposed Rule 21F-4(a)(2) for information provided pursuant to a pre-existing legal or contractual duty to report violations appropriate? Should specific circumstances where there are pre-existing duties to report violations to investigating authorities be set forth in the rule, and if so, what are they? For example, should the rule preclude submissions from all Government employees?

*Yes. No – specific circumstances should not be added. However, a general preclusion of Government employees would be appropriate.*

7. Is it appropriate to include knowledge that is not direct, first-hand knowledge, but is instead learned from others, as “independent knowledge,” subject only to an exclusion for knowledge learned from publicly-available sources?

*Yes.*

8. Is there a different or more specific definition of “analysis” that would better effectuate the purposes of Section 21F?

*Only to be explicit that the analysis is new to the SEC. This may be accomplished by adding to the definition as follows: “...that is not generally known or available to the public or the SEC.”*

9. Is it appropriate to exclude from the definition of “independent knowledge” or “independent analysis” information that is obtained through a communication that is protected by the attorney-client privilege? Are there other ways these rules should address privileged communications? For example, should other specific privileges be identified (spousal privilege, physician-patient privilege, clergy-congregant privilege, or others)? Should the exclusion apply broadly to information that is obtained through communications that are subject to any common law evidentiary privileges recognized under the laws of any state?

*Yes, assuming that timely, appropriate investigation and reporting of the matter by the company occurred. Otherwise, use of attorney-client privilege should not preclude an individual from reporting a securities violation that is not being appropriately handled by the company and participating in the whistleblower award.*

10. Is it appropriate to exclude from the definition of “independent knowledge” or “independent analysis” information that is obtained through the performance of an engagement required under the securities laws by an independent public accountant, if that information relates to a violation by the engagement client or the client’s directors, officers or other employees? Are there other ways that our rules should address the roles of accountants and auditors?

*Yes. Not aware of other roles that should be addressed.*

11. Should the exclusion for “independent knowledge” or “independent analysis” go beyond attorneys and auditors, and include other professionals who may obtain information about potential securities violations in the course of their work for clients? If so, are there appropriate ways to limit the nature or extent of the exclusion so that any recognition of relationships of professional trust does not undermine the purposes of Section 21F?

*Yes. The exclusion should pertain to any individual hired by the company who does not first use the company’s internal reporting process or satisfies the Commission that such a process did not exist or was ineffective.*

12. Apart from persons who obtain information through privileged communications, and professionals who have access to client information, are there still other categories of persons who should not be considered for whistleblower awards based upon their professional duties or the manner in which they may acquire information about potential securities violations? If such exclusions are appropriate, what limits, if any, should be placed on them in order not to undermine the purposes of Section 21F? Is the exclusion for knowledge obtained through violations of criminal law appropriate?

*Yes. The exclusion from obtaining an award should pertain to any individual who does not first use the company’s internal reporting process or satisfies the Commission that such a process did not exist or was ineffective.*

13. Do the proposed exclusions for information obtained by a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity under an expectation that the person would cause the entity to take steps to respond to the violation, and for information otherwise obtained from or through an entity’s legal, compliance, audit, or similar functions strike the proper balance? Will the carve-out for situations where the entity does not disclose the information within a reasonable time promote effective self-policing functions and compliance with the law without undermining the operation of Section 21F? Should a “reasonable time” be defined in the rule and, if so, what period should be specified (e.g., three months, six months, one year)? Does this provide sufficient incentives for people to continue to utilize internal compliance processes? Are there alternative or additional provisions the Commission should consider that would promote effective self-policing and self-reporting while still being consistent with the goals and text of Section 21F?

*A specific requirement to first report through internal processes up to the entity’s Board would seem appropriate.*

*We recommend that the Commission amend the proposed rules to explicitly allow any company official to participate in the whistleblower award if they demonstrate to the Commission that a higher governance authority acted in bad faith to appropriately investigate and resolve the allegation.*

*In this instance, a compliance official (or any other official normally involved in compliance, ethics, audit, or governance roles) would be eligible for an award if the company failed to act and report the matter including circumstances where a higher governance authority inappropriately directed the compliance officer not to handle the matter properly. Such consideration could even be extended to a Board member who is overruled by a majority of the Board.*

14. Is the proposed exclusion for information obtained by a violation of federal or state criminal law appropriate? Should the exclusion extend to violations of the criminal laws of foreign countries? What would be the policy reasons for either extending the exclusion to violations of foreign criminal law or not? Are there any other types of criminal violations that should be included? If so, on what basis?

*We agree with the exclusion and recommend that the exclusion include violation of criminal laws of other countries.*

15. How should our rules treat information that may be provided to us in violation of judicial or administrative orders such as protective orders in private litigation? Should we exclude from whistleblower awards persons who provide information in violation of such orders? What would be the policy reason for this proposed exclusion?

*We agree with the exclusion.*

16. Is the provision that would credit individuals with providing original information to the Commission as of the date of their submission to another Governmental or regulatory authority, or to company legal, compliance, or audit personnel, appropriate? In particular, does the provision regarding the providing of information to a company's legal, compliance, or audit personnel appropriately accommodate the internal compliance process?

*Yes, it would be appropriate to credit individuals based on their utilization of internal compliance processes. This would help encourage use of internal programs.*

17. Is 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) the appropriate timeframe? Should a longer time period apply in instances where a whistleblower believes that the company has or will proceed in bad faith? Would a 90-day deadline for submitting the TCR and WB-DEC also be appropriate in circumstances where an individual provides information to an SEC staff member? Would a shorter time frame be appropriate? Should there be different time frames for disclosures to other authorities and disclosures to an employer's legal, compliance or audit personnel?

*A 90 day deadline is too short and arbitrary. The length of investigative processes involving data collection, analysis, interviews, and other procedures generally will take a longer period. The Commission should not set a fixed time period but define the requirement as a reasonable period of time based on the nature of the allegation and resultant activities.*

18. Should the Commission consider other ways to promote continued robust corporate compliance processes consistent with the requirements of Section 21F? If so, what alternative requirements should be adopted? Should the Commission consider a rule that, in some fashion, would require whistleblowers to utilize employer-sponsored complaint and reporting procedures? What would be the appropriate contours of such a rule, and how could it be implemented without undermining the purposes of Section 21F? Are there other incentives or processes the Commission could adopt that would promote the purposes of Section 21F while still preserving a critical role for corporate self-policing and self-reporting?

*Whistleblowers should be required to first report internally to allow the company to investigate the allegation, unless they can demonstrate that the internal reporting process was non-existent or ineffective. The "date of record" which is used to secure a whistleblower's place in line should be the date the allegation was reported internally rather than to the SEC. Internal compliance functions are generally*



*better situated to vet the allegations in an expeditious manner than government agencies. By allowing adequate time for the company to make the initial investigation, the SEC would create a partner rather than a competitor in their common goal of identifying and resolving security violations. Additionally, by allowing internal investigations to proceed without SEC involvement, the company can demonstrate (or not) compliance and effectiveness of its internal processes. If the internal investigation is ineffective, then the whistleblower can report to the SEC and be rewarded appropriately.*

*We recommend that the Commission amend the proposed rules to explicitly require that whistleblowers have first utilized their company's internal reporting process – or demonstrated to the Commission's satisfaction that such a process was non-existent or ineffective – in order to be eligible for receiving any award. To balance such a rule, the Commission should consider amending the proposed rules or other Commission rules as appropriate, to take into account the company's adherence to various anti-retaliation rules and the company's cooperation with the SEC when determining fines.*

*Specifically, we recommend that "21F-6 Criteria for Determining Amount of Award" include a provision to eliminate or reduce the award significantly if the individual failed to use the entity's internal reporting process unless the individual can show just cause to believe that the entity's internal reporting process was non-existent or ineffective. To further support effective internal reporting, the Commission should also consider increasing awards whenever whistleblowers demonstrate that they have suffered retaliation as a result of their good faith internal reporting of an allegation.*

19. Would the proposed rules frustrate internal compliance structures and systems that many companies have established in response to Section 10A(m) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act of 2002, and related exchange listing standards? If so, consistent with Section 21F, how can the potential negative impact on compliance programs be minimized?

*Without adopting some of the recommendations provided in response to the other questions, internal programs could be compromised or negated to some degree. Adoption of these recommendations would help minimize negative impact.*

*We recommend that the Commission take every effort to encourage, support, and strengthen effective processes within companies to:*

- a) solicit reporting of fraudulent activities,*
- b) aggressively investigate suspected fraudulent activities,*
- c) remediate such activities and communicate with the Commission as appropriate, and*
- d) protect and champion internal whistleblowers.*

*It is important that the proposed rules do not interfere with nor undermine the effectiveness of internal whistleblower processes that are operating in good faith to comply with existing regulations. The Commission's ability to use only its own resources to solicit, investigate, and identify fraudulent activities across all registrant companies will be limited even under the best circumstances. Governance structures and compliance programs are best implemented by the companies themselves. Only through the establishment of comprehensive and effective internal processes by registrant companies will the Commission be able to ensure that investors are protected.*

20. Is the proposed standard for when original information voluntarily provided by a whistleblower "led to" successful enforcement action appropriate?

*Yes.*



21. In cases where the original information provided by the whistleblower caused the staff to begin looking at conduct for the first time, should the standard also require that the whistleblower's information "significantly contributed" to a successful enforcement action?
- If not, what standards should be used in the evaluation?
  - If yes, should the proposed rule define with greater specificity when information "significantly contributed" to enforcement action? In what way should the phrase be defined?

*Yes, information should "significantly contribute" in order to avoid individuals using a shotgun approach to provide general information.*

22. Is the proposal in Paragraph (c)(2), which would consider that a whistleblower's information "led to" successful enforcement even in cases where the whistleblower gave the Commission original information about conduct that was already under investigation, appropriate? Should the Commission's evaluation turn on whether the whistleblower's information would not otherwise have been obtained and was essential to the success of the action? If not, what other standard(s) should apply?

*Yes. Yes.*

23. The Commission requests comment on the proposed definition of the word "action." Are there other ways to define an "action" that are consistent with the text of Section 21F and that will better effectuate the purposes of the statute?

*Appears appropriate as defined.*

24. Is the proposed definition of "appropriate regulatory agency" appropriate? Are there other definitions that that should be adopted instead?

*Appears appropriate as defined.*

25. Is the proposed definition of "self-regulatory organization" appropriate? Are there other definitions that that should be adopted instead?

*Appears appropriate as defined.*

26. Is the provision stating that the percentage amount of an award in a Commission action may differ from the percentage awarded in a related action appropriate?

*Yes*

27. Should the Commission identify, by rule, additional criteria that it will consider in determining the amount of an award? If so, what criteria should be included? Should we include as a criterion the consideration of whether, and the extent to which, a whistleblower reported the potential violation through effective internal whistleblower, legal or compliance procedures before reporting the violation to the Commission? Should we include any of the other considerations described above?

*We recommend that the Commission amend the proposed rules to explicitly reduce awards if the whistleblower does not report suspected fraudulent activity via internal company process in a timely manner.*

*Specifically, we recommend that “21F-6 Criteria for Determining Amount of Award” should include a provision to reduce the award significantly if the individual knew of fraudulent conduct for an extended period of time and failed to report such conduct via the company’s internal process and allow the company adequate time to investigate the allegation before reporting the violation to the Commission.*

*We recommend that the Commission amend the proposed rule to explicitly deny any award to a whistleblower that reports allegations to the Commission in those instances where – to the Commission’s satisfaction – the company identified the fraudulent activity, investigated thoroughly the fraudulent activity, with the Commission or other appropriate regulatory body.*

*In this instance, identification of the fraudulent activity would require the whistleblower to have reported the matter internally via the company’s internal processes.*

- a. The whistleblower’s “spot in line” for any award in those circumstances where the company did not act appropriately would be based upon the whistleblower’s documentation of reporting the allegation via internal company processes.*
- b. Commission will:
  - i. encourage implementation of effective internal self-reporting and investigation programs,*
  - ii. encourage employees’ use of those internal programs, and*
  - iii. clearly define a whistleblower as those who inform the Commission of fraudulent activity that is not addressed appropriately by a company’s internal process versus those who are simply first to inform the Commission of any allegation.**

28. Should we include the role and culpability of the whistleblower in the unlawful conduct as an express criterion that would result in reducing the amount of an award within the statutorily-required range? Should culpable whistleblowers be excluded from eligibility for awards? Would such an exclusion be consistent with the purposes of Section 21F?

*Yes, culpable whistleblowers should be excluded, unless their involvement or culpability was clearly incidental, for example, a department head who did not participate in or have actual knowledge of the wrongdoing. Reward programs should not be structured to encourage people to break the law or bypass the internal reporting process.*

29. Because representation of whistleblowers constitutes practice before the Commission by an attorney, should the Commission consider adopting rules governing conduct by attorneys engaged in this type of practice? In some contexts, courts have disallowed excessive fee requests to attorneys for whistleblowers. Should we adopt a rule regarding fees in the representation of whistleblower clients? Would such a rule encourage or discourage whistleblower submissions?

*Yes, we support setting limits or caps on attorney fees or share percentages. A whistleblower in a difficult situation may have limited ability to negotiate appropriate fees for representation.*

30. We request comment on the manner of submission requirements set forth in Proposed Rule 21F-8(b). Are these requirements appropriate? Should there be different or additional requirements to supplement the submission of information as set forth in Proposed Rule 21F-9?

*No additional comment.*

31. We also request comment on the ineligibility criteria set forth in Proposed Rule 21F-8(c). Are there other statuses or activities that should render an individual ineligible for a whistleblower award?

*No additional comment.*

32. Although the Commission is proposing alternative methods of submission, we expect that electronic submissions would dramatically reduce our administrative costs, enhance our ability to evaluate tips (generally and using automated tools), and improve our efficiency in processing whistleblower submissions. Accordingly, we solicit comment on whether it would be appropriate to eliminate the fax and mail option and require that all submissions be made electronically. Would the elimination of submissions by fax and mail create an undue burden for some potential whistleblowers?

*Yes, some individuals may not be able to report electronically; allowing only electronic submission could cause some incidents to not be reported. Different levels of trust in and accessibility to mail, fax, or electronic submission exist. The Commission can provide incentives (e.g. reduce the award amount for the cost of handling hardcopy) to encourage electronic submission.*

33. Is there other information that the Commission should elicit from whistleblowers on Proposed Forms TCR and WB-DEC? Are there categories of information included on these forms that are unnecessary, or should be modified?

*Based on adoption of some of the recommendations made above, for example, questions about whether the incident has been reported internally, the date of the report, and to whom should be added.*

34. Is the requirement that an attorney for an anonymous whistleblower certify that the attorney has verified the whistleblower's identity and eligibility for an award appropriate? Is there an alternative process the Commission should consider that would accomplish its goal of ensuring that it is communicating with a legitimate whistleblower?

*Yes. No additional comment on alternative process.*

35. Is the Commission's proposed process for allowing whistleblowers 120 days to perfect their status in cases where the whistleblower provided original information to the Commission in writing after the date of enactment of Dodd-Frank but before adoption of the proposed rules reasonable? Should the period be made shorter (e.g., 30 or 60 days) or longer (e.g., 180 days)?

*No additional comment.*

36. Are there any ways we can streamline and make the required procedures more user-friendly?

*No additional comment.*

37. We request comment on the significance of the tension between the interests of whistleblowers and victims in this circumstance, the likelihood that this situation would arise, and whether there is anything that the Commission can or should do to mitigate this tension.

*No additional comment.*

38. For example, in determining whether the \$1,000,000 threshold for a covered action has been met, should we exclude monetary sanctions ordered against an entity whose liability is based substantially on conduct that the whistleblower directed, planned, or initiated? Should we exclude those amounts from monetary sanctions collected for purposes of making payments to whistleblowers?

*Whistleblowers that directed, planned, or initiated illegal conduct should not be entitled to any reward. Therefore, this determination would not be applicable. All such amounts should be excluded.*

39. Is the proposed exclusion of monetary sanctions ordered against an entity whose liability is based substantially on conduct that the whistleblower directed, planned, or initiated appropriate? Is the proposed exclusion sufficient to permit the Commission to deny awards in cases where the payment of an award would be against public policy? Should we instead exclude any wrongdoer from being eligible to receive an award categorically, or in particular circumstances? Should an individual's level of culpability be considered as a factor in determining whether the person is eligible for an award? Are there other ways in which we should limit the payment of awards to culpable individuals?

*Yes. Yes. Yes, wrongdoers should be excluded from rewards. Yes, the level of culpability should be a factor. Incidental involvement just because someone is a department head but did not participate in or have actual knowledge of the wrongdoing should be considered.*

40. Should these provisions be narrowed and, if so, why and in what manner? Would these provisions encourage whistleblowers to provide information to the Commission regarding potential securities law violations? Are there additional measures that the Commission could consider to encourage and facilitate whistleblowers' communications with Commission staff?

*No additional comment.*

41. Should the Commission consider rules to address other potential issues that may arise from state bar professional responsibility rules when the Commission staff receives information about potential securities law violations from whistleblowers? For example, are there circumstances where the staff's receipt of information from whistleblowers potentially conflicts with the state bar professional responsibility rules that are modeled on ABA Model Rules of Professional Responsibility 4.4(a) and 8.4(a)? If so, should the Commission consider promulgating rules to address these potential conflicts?

*No additional comment.*

42. Should the anti-retaliation protections set forth in Section 21F(h)(1) of the Exchange Act be applied broadly to any person who provides information to the Commission concerning a potential violation of the securities laws, or should they be limited by the various procedural or substantive prerequisites to consideration for a whistleblower award? Should the application of the anti-retaliation provisions be limited or broadened in any other ways? For example, should the Commission consider promulgating a rule to exclude frivolous or bad faith whistleblower claims from the protections

afforded by the anti-retaliation provisions? If so, what rules should be adopted to address these problems?

*Rules regarding frivolous or bad faith whistleblower claims should be promulgated. Most companies have policies indicating that disciplinary actions can be taken against whistleblowers who filed allegations in bad faith. While the bar for disciplinary actions should be high, the Commission should not allow anti-retaliation provisions to apply to all potential violations reported to the Commission.*

*The SEC should structure the rules to ensure that anti-retaliation protections are extended to protect individuals (whistleblowers and others) involved in good faith cooperation with any SEC inquiry so that full cooperation is provided without fear of reprisals.*

43. Are there rule proposals that the Commission should consider promulgating to ensure that the anti-retaliation provisions are not used to protect employees from otherwise appropriate employment actions (i.e., employment actions that are not based on reporting potential securities law violations)?

*See answer to 42.*

*Yes, the anti-retaliation provisions should be used to protect employees from employment actions related to good faith reporting of securities violation. However, the provisions should not prevent the company from taking otherwise appropriate employment actions on unrelated matters (e.g. performance issues).*