

BEGELMAN, ORLOW & MELLETZ

Attorneys at Law

Cherry Hill Professional Building
411 Route 70 East, Suite 245
Cherry Hill, New Jersey 08034

(856) 428-6020

(215) 235-6020

FAX

(856) 428-5485

E-MAIL - LAWPI@AOL.COM
www.begelmanorlow.com

101 West Elm Street
Suite 320
Conshohocken, Pa 19428

(215) 235-6020

REPLY TO:

Cherry Hill

ROSS BEGELMAN
MARC M. ORLOW
PAUL R. MELLETZ *
JORDAN R. IRWIN
STEVEN LUBCHER
MICHELLE ISEMAN
MEMBERS NEW JERSEY & PENNSYLVANIA BARS
*MEMBER NEW JERSEY BAR

December 16, 2010

Mary Schapiro
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Title IX - Whistleblower Award Program

Dear Commissioner Schapiro:

The whistleblower provisions contained in Sec. 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act mandate that the Securities and Exchange Commission promulgate regulations with respect to a number of issues impacting whistleblowers. We are Qui Tam attorneys who have litigated False Claims Act proceedings in federal court and have filed claims with the IRS Office of Whistleblower Protection under its new program. We represent whistleblowers under a variety of Federal and State laws that provide protection to whistleblowers in their employment. A

I am writing to suggest items that should be addressed in any proposed regulations. We make these comments based on our experience in representing whistleblowers who have made the courageous decision to report wrongdoing and suffered retaliation as a result as well as our efforts to pursuing qui tam claims during the Government investigation these claims.

I. Complaint Procedure and Investigation

The manner in which Complaints are processed and investigation will be critical to the success of the program. An essential element of this process must incorporate a systemic and effective dialogue with the whistleblower and their counsel so that maximum assistance can be provided to SEC staff. We are concerned that once a complaint is filed, there be a system to ensure that it is properly investigated and the whistleblower kept apprised of the status of the investigation so that it does not disappear into the system. I suggest that the Commission assign case officers to all filed matters and be required to update the whistleblower on a periodic basis, but no less than every three months. Commission staff assigned should be required to have at

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least one meeting with the whistleblower and their counsel in order to review the complaint and assess the quality of the information being presented.

II. Internal Reporting Requirement

Whistleblowers should not be required to first utilize so called internal "whistleblower hotlines". These only act as an additional impediment to reporting because the fear of retaliation is enormous. A whistleblower faces enough risks of retaliation and should be permitted to report directly to law enforcement first if that is their choice. After all, it is the whistleblower who ultimately understands that corporate culture the best in order to make the assessment as to whether the corporate hotline will be effective.

Please note that based on our experience in the fraud arena, we've observed that when company management intends to defraud the public (despite having Sarbanes-Oxley reporting requirements), company management will find ways to intimidate employees who come across fraud, thus making both whistleblower hotlines and other internal reporting channels ineffective.

In many instances, our clients say that the compliance programs in place oversee only basic bookkeeping activities, but not the more complex fraud that is perpetrated by company management. It is common knowledge in the accounting profession that Sarbanes-Oxley reporting requirements are not as robust as they are defined by management and agreed to with their public auditors.

In addition, we take issue with companies that publicly complain that their compliance programs are at "risk" if an individual, such as a compliance person, should come forward to the Commission, these companies should, in fact, have nothing to fear, if they have robust programs.

Lastly, when an internal company employee that has knowledge of the subject matter that violates securities laws, becomes aware that an investigation is being performed, this individual typically becomes a quick target for a lay-off on trumped-up charges. Companies have now resorted to clauses in employee termination contracts that specifically demand that terminated employees do not go to the government to discuss any matter harmful to the company in exchange for more money. In other words, companies are already ahead of the game in rooting out potential whistleblowers and when potential adversity strikes, they are prepared to oust the employee within a very short time frame, certain that these individuals will keep quiet.

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If you have any questions concerning the above, we would welcome the opportunity to further assist the Commission and its staff.

Sincerely,

Begelman, Orlow & Melletz

By: 

Marc M. Orlow