



March 11, 2022

Ms. Vanessa Countryman
Secretary, U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

via email: / rule-comments@sec.gov

**Re: Comment in Support of National Whistleblower Center, *et al* Petition No. 4-783 -
Dodd-Frank Act Coverage for News Media Whistleblowers**

Dear Ms. Countryman:

We are writing in strong support of the petition filed by the National Whistleblower Center, Whistleblower Network News, and the law firm of Kohn, Kohn, and Colapinto.

As non-U.S. whistleblower rights organizations located in Europe, we understand the essential role a free press plays in the ability for whistleblowers to alert the public as to violations of law and frauds. We are in regular contact with whistleblowers from throughout the world. These whistleblowers do not understand that the Dodd-Frank Act has transitional application, and can provide invaluable support for non-U.S. citizens.

Given the widespread ignorance as to the scope of the Dodd-Frank Act, numerous whistleblowers initially contact the news media (either by name or anonymously) to report their concerns. These reports serve the public interest and in Europe (and other nations) are unquestionably the main vehicle for alerting the public, investors, and government agencies as to violations of law.

We are also basing this letter on the extensive experience I have had as a journalist, prior to undertaking my current positions. I worked as a staff writer and editor at newspapers and magazines in the U.S. for 15 years, including The New York Times Co. and Knight-Ridder. I published an independent newsmagazine where I received the top investigative reporting award in the U.S. As an anti-corruption advocate and policy advisor for the past 21 years, I have worked very closely with journalists and media outlets in the U.S. and Europe.

Over these more than three decades, hundreds of people have contacted our publications and our partner organizations to report and reveal a full range of crimes and acts of corruption – including offenses that fall within the SEC’s jurisdiction Dodd-Frank Act and other laws and regulations. Dozens of current and former employees of publicly traded companies registered in the U.S. have contacted us with evidence of violations, including falsified reporting, illicit payments, procurement and contracting fraud, collusive behavior, bid-rigging, misleading of the investment community, and People making these disclosures have been from many different countries in all regions of the world.

By our estimation, more than 90 percent of them were completely unaware of the Dodd-Frank Act and its international scope. Most of them said they were willing to forward the evidence they had collected to authorities in the U.S. – or any other country with jurisdiction, for that matter.

Based on the invaluable role that news media disclosures, we have carefully read Petition No. 4-783. The request for relief set forth therein needs to be immediately granted.

In addition to the arguments raised in the Petition, we would like to call the Commission’s attention to the importance of fully implementing the Commission policy on freedom of the press as it impacts whistleblowers who provide information directly to the news media. This policy accurately reflects the role of the news media in addressing serious violations of law. However, without the information provided by whistleblowers to the news media, this policy rings hollow. In fact, the policy was drafted in direct response to the SEC’s need to learn the identity of informants to the news media. Implementation of the Dodd-Frank Act’s news media requirements would obviate the need to subpoena the news media in most cases.

Based on our years of experience working with whistleblowers and the news media, it is obvious that if whistleblowers knew that they could qualify for a reward under the Dodd-Frank Act, even if they initially disclosed their allegations to the news media, and the SEC was trying to contact them for information, they would gladly and enthusiastically comply.

However, if these same whistleblowers understood that if they responded to a request from the SEC for information after their allegations were reported in the press, that they would be disqualified from a reward, not only would they dodge the Commission’s inquiries, they would feel betrayed.

As reflected in Petition No. 4-783, and as published on the SEC website, the Commission’s policy on freedom of the press is set forth below. In footnotes accompanying this full citation, we are addressing how the proper implementation of

the Dodd-Frank Act's whistleblower law would assist the SEC in implementing this vital policy:

Freedom of the press is of vital importance to the mission of the Securities and Exchange Commission. Effective journalism complements the Commission's efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve.¹ Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct.² In this *Policy Statement the Commission sets forth guidelines for the agency's professional staff* to ensure that vigorous enforcement of the federal securities laws is conducted completely consistently with the principles of the First Amendment's guarantee of freedom of the press,³ and specifically to avoid the issuance of subpoenas to members of the media that might impair the news

¹ This is absolutely true. Based on our experience the news media is an essential source for investors to learn the truth about potential frauds or violations of public policies many investors hold dear. Whistleblowers are the best source of this information, especially when a company has engaged in wrongdoing or is trying to hide its practices that could result in investors selling their stocks. The Dodd-Frank Act, if properly implemented in accordance with the requests in the Petition, could serve a vital role in this process.

² The Commission got this right. Diligent reporting is *essential* to bring wrongdoing to light. Nowhere is this more important than outside the United States, where securities related crimes are rampant (such as foreign bribery), yet the overwhelming number of whistleblowers do not know that once they blow the whistle to the news media, they may still qualify for a reward, even if the United States has opened a full-scale investigation based on their disclosures. This is especially important for having the whistleblowers being willing to step forward during the investigatory process, and fully cooperate. Denying such whistleblowers a reward would be, in our opinion, immoral and a betrayal of every principle underlying the Dodd-Frank Act, Commission policies, and the goals of the United States Congress. These international whistleblowers, who courageously report violations of law to the news media, need to be encouraged and incentivized to help in the investigations their courage triggered. To punish them for reporting to the news media is unbelievable, and it would be very hard to ever explain such a process to any whistleblower, without simultaneously undermining the very heard of whistleblower laws.

³ We understand that this is the very purpose of the Petition: To provide guidance to all staff members on how to treat news media whistleblowers during both the investigation into a crime, and in the reward process. The staff needs to know that they can use the benefits of the Dodd-Frank Act when discussing scandals reported in the press to induce reporters to contact their sources and fully cooperate with the United States government.

gathering and reporting functions.⁴ These guidelines shall be adhered to by all members of the staff⁵ in all cases:

(a) In determining whether to issue a subpoena to a member of the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective enforcement of the federal securities laws.⁶

(b) When the staff investigating a matter determines that a member of the news media may have information relevant to the investigation,⁷ the staff should:

1. Determine whether the information might be obtainable from alternative non-media sources.⁸

⁴ Approving the relief requested in the Petition would play a vital role in preventing the Commission staff from ever having to issue a subpoena. But if the staff truthfully tells these courageous sources that they are not entitled to any reward because the SEC or DOJ investigator called them up looking for follow-up information or documents (for example, a call triggered simply by the SEC investigator learning of their identity from reading a newspaper or having a journalist urge the whistleblower to respond to the government's request for information), the reaction of the whistleblower is predictable. Moreover, outside of the United States these potentially invaluable sources (and the journalists who covered their stories) would not be subject to a subpoena. Not only would the American people (and all investors) lose access to potentially invaluable sources, but the entire Dodd-Frank program would be disgraced.

⁵ The procedures advocated in the Petition should similarly apply to all Commission staff. Moreover, guidance should be provided to Commission staff as to how they can use the reward provisions of the Dodd-Frank Act to encourage voluntary cooperation concerning access to information that the Commission itself acknowledges can play a critical role in enforcing the law and protecting investors.

⁶ Moreover, the Commission staff should be required to determine whether or not the Dodd-Frank Act's reward provisions, properly implemented as requested in the Petition, can induce the informants to voluntarily (and enthusiastically) cooperate.

⁷ This provision clearly relates to the ability of the news media to access whistleblower information by promising confidentiality. Again, the Dodd-Frank Act can and should act as the bridge for the Commission to access this information, and also to access such information outside the United States, where a subpoena may be completely unenforceable.

⁸ The most obvious non-media source would be the person with actual "original information," i.e. the whistleblower. Under current Commission rules, that whistleblower would be completely denied any reward if the SEC sought out this whistleblower and contacted him or her.

2. Make all reasonable efforts to obtain that information from those alternative sources.⁹ Whether all reasonable efforts have been made will depend on the particular circumstances of the investigation, including whether there is an immediate need to preserve assets or protect investors from an ongoing fraud.
3. Determine whether the information is essential to successful completion of the investigation.¹⁰

(c) If the information cannot reasonably be obtained from alternative sources and the information is essential to the investigation, then the staff, after seeking approval from the responsible Regional Director, District Administrator, or Associate Director, should contact legal counsel for the member of the news media. Staff should contact a member of the news media directly only if the member is not represented by legal counsel. The purpose of this contact is to explore whether the member may have information essential to the investigation, and to determine the interests of the media with respect to the information. If the nature of the investigation permits, the staff should make clear what its needs are as well as its willingness to respond to particular problems of the media. The staff should consult with the Commission's Office of Public Affairs, as appropriate.¹¹

The remainder of the Policy Statement concerns additional procedures that should be followed prior to the issuance of a subpoena (or procedures for filing a

⁹ Implementing a procedures to use the Dodd-Frank Act, as requested in the Petition, is perhaps the best way to obtain the information for an alternative source. Moreover, the informant to the news media would be the informant most likely to have actual "original information" necessary to secure a sanction, and also have access to other information to aid a Commission investigation.

¹⁰ The best way to determine the potential usefulness of the information is to use the Dodd-Frank Act to incentivize the original source to come forward. The current rules undermine this goal, and provide no guidance to SEC staff as to how they can honestly use the tools afforded by the Dodd-Frank Act to achieve this goal.

¹¹ Hopefully, the implementation of the reforms requested in the Petition would obviate the need for such an escalation in most cases. However, the solution to this entire problem could be simple. If a Commission staff member informed the journalist that (a) they wanted to speak to the source; (b) the source could submit his or her information confidentially or anonymously to the SEC; (c) the source could qualify for a monetary reward, the odds that the journalist would rely this information to the source is highly likely. Once this information is relayed to the source, the probability that he or she would consent to taking a call from the SEC is also highly likely.

subpoena). As has been explained above, the ability of the SEC staff to use the tools afforded under the Dodd-Frank Act to obtain fully cooperation from the media source, and cooperation from the news media in acting as a liaison in alerting the source to the benefits of the Dodd-Frank Act, is precisely why the Petition should be granted.

We strongly support Petition No. 4-783. If the Commission has any questions for the Center, especially regarding the importance of granting the petition to assist whistleblowers and the regulatory process internationally, please contact me.

Thank you very much for your consideration on this issue of great importance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Mark Worth', written in a cursive style.

Mark Worth
Executive Director
European Center for Whistleblower Rights / Whistleblowing International
Berlin / The Hague