

April 5, 2022

Submitted by Email: rule-comments@sec.gov

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

**Re: Petition No. 4-783
Dodd-Frank Act – Whistleblower Protection**

Dear Ms. Countryman:

I am writing to strongly endorse Petition No. 4-783, filed by the National Whistleblower Center, Whistleblower Network News, and the whistleblower attorneys at Kohn, Kohn & Colapinto, LLP. This petition requests that the Commission implement changes to its current practices regarding “media whistleblowers,” i.e., whistleblowers who initially report securities violations to the news media in circumstances where the SEC learns the identity of the whistleblower and/or the whistleblower’s allegations as a result of reports in the news media.

Before I explain my position on the petition rule, I want to thank the Commission for the consideration it gave me during the 2018-2020 rulemaking proceeding, when I had the opportunity to meet with Commissioners and their staff in order to explain my position on a number of the proposed rules under consideration. I was impressed with the openness of the Commission and its willingness to listen to positive criticism of its proposed rules, and modify most of the proposals in a manner consistent with the interests of accountability and the protection of whistleblowers. I am also aware of the progress the Commission has made since September 2020 in processing cases and publicly supporting the whistleblower program, as reflected in the Chairman’s public comments, the participation of the Chairman in National Whistleblower Day, and the current proposed rule change to the “related action” regulations.

My opinion on the Petition is based on my background as a Vice President of a publicly traded company, the Enron Corp., my educational background as a Certified Public Accountant, experience in working within a corporation that had engaged in major frauds at the highest C-Suite level, discussions with numerous whistleblowers over the past 20+ years, direct witnessing of the positive impact the press can have on protecting investors and serving the public interest, and my personal experience as a whistleblower.

Simply stated, the Commission should not impose any requirements on news media whistleblowers that prejudice their right to obtain compensation under the Dodd-Frank Act, if the SEC learns of the whistleblower’s identity and/or their information as a result of the news media reports. This is especially true when determining whether a whistleblower is “voluntary” and in deciding the timing of a TCR filing. It is extremely important for the Commission to have clear rules directly related to the unique issues facing whistleblowers who directly communicate with the Commission, and how the Commission processes information they learn from media reports. The procedures or rules proposed by the Petition will balance these interests and serve to protect investors. The current regulations were unquestionably developed without consideration of the public interest served by news media whistleblowers. I understand that the issues raised in the Petition were never considered in the two extensive rulemaking proceedings conducted by the SEC, and that the right of whistleblowers to provide information directly to the news media was never weighed.

It is time to fix this problem.

If a whistleblower voluntarily provides information to the news media, and the SEC contacts that whistleblower as a result of his or her communications with the media, that whistleblower must be

considered a “voluntary” source of information to the SEC. I understand that, under the current rules, that is not the case. Any such interpretation of the Dodd-Frank Act that eliminates protections afforded whistleblowers because their concerns are initially reported in the news media does not serve the public interest, and goes against the spirit of the Dodd-Frank Act which seeks to protect whistleblowers. I currently teach a graduate course, Corporate Governance, Leadership and Ethics at the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill, and Business Ethics at the McCoy College of Business at Texas State University. The SEC’s Office of the Whistleblower and the success of this reward program is a check and balance on abuses of power in our capitalist system which I routinely discuss in my classes. The likelihood of being caught in wrongdoing has been greatly enhanced and serves as an ongoing robust deterrent to those in corporate America looking to cut corners and violate securities laws.

From personal experience, attempting to speak truth to power, to uncover wrongdoing or stop wrongdoing is a tough road to take and the problems encountered by whistleblowers are too much to put on individuals. More often than not, the whistleblower is disgusted by the wrongdoing and the harm to victims and is often trying to protect the victims and limit the damage as quickly as can be done. Going to the media can feel like the best way to make this happen and is often one of the next steps a whistleblower takes once internal discussions have gone nowhere. I am preaching about Dodd-Frank and the SEC’s Office of the Whistleblower as much as possible – in my classes, in every speaking event I’m offered, because more citizens need to be aware of this amazing program and provide “tips, complaints and referrals” to the SEC as a first option. But if they don’t know about it, it would be a shame if their action to report first to the media meant they were precluded from an SEC award down the road. Whistleblowers need an ability to alter the balance of power between themselves and the more powerful organization they are reporting. Full access to the benefits of the SEC’s Office of the Whistleblower goes a long way to making that happen.

I have reviewed the initial petition, and the letters of support filed by Dean Zerbe and Whistleblowing International/European Center for Whistleblower Rights.¹ These materials reinforce the urgent need for the SEC to ensure that media whistleblowers are fully protected. Mr. Zerbe made a particularly compelling argument as to how the reforms requested in the Petition are required under the DFA, and I need not repeat those arguments here.²

The letter filed by the European Center for Whistleblower Rights/Whistleblowing International cited to an existing Commission policy on news media disclosures.³ The Commission’s current policy on news media disclosures, published at <https://www.sec.gov/news/press/2006/2006-55.htm>, accurately reflects the vital role the news media can play in enforcing securities laws. As such, the Commission needs to acknowledge that the Dodd-Frank Act whistleblower law can play an instrumental role in effectuating this policy by recognizing the eligibility of whistleblowers who report securities law violations to the news media. Moreover, any current Commission rule that prejudices whistleblower communications to the news media is not in the public interest and would clearly interfere with the

¹Available at Comments on Petition for Issuance, Amendment or Repeal of Commission Rules Related to Whistleblower Submission of Original Information to the News Media [File No. 4-783], <https://www.sec.gov/comments/4-783/4-783.htm>, (last visited April 4, 2022).

² See March 4, Comment from [Dean Zerbe, on behalf of Zerbe, Miller, Fingeret, Frank and Jadav, LLP](#), available at <https://www.sec.gov/comments/4-783/4783-20118691-271561.pdf>.

³ See, March 11, Comment from [Mark Worth, Executive Director, European Center for Whistleblower Rights/Whistleblowing International, Berlin/The Hague](#), available at <https://www.sec.gov/comments/4-783/4783-20118801-271638.pdf>.

rights of investors to obtain timely and accurate information about companies they invest in (or may invest in).

The Commission’s current policy on “Freedom of the Press” recognizes the importance of media disclosures in protecting investors and the public interest:

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.⁴

Based on my own personal experiences, and in my 20-years of working with other whistleblowers and with reporters, this statement has proven true. Effective journalism does complement the work of the Commission and can ensure that investors receive critical and timely information concerning potential securities frauds. The Commission rules should *encourage* such disclosure in appropriate cases. Based on my “insider” perspective, encouraging such reports will have a deterrent effect on wrongdoing. Those who may be thinking of committing frauds should fear the potential that their misconduct will be reported in the press. This deterrent effect was recognized in the SEC policy on freedom of the press, where the Commission affirmed the following:

Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct.⁵

The reforms requested in the Petition are narrowly drafted, would ensure that the Commission’s actions under the Dodd-Frank Act are consistent with statutory requirements, would serve the public interest, would deter wrongdoing, and would help ensure that investors obtain truthful and accurate information about companies regulated under the Securities Exchange Act.

Thank you for your past support for whistleblowers, and for the ongoing efforts undertaken by the Commissioners and SEC staff to strengthen whistleblower protections and incentives. The reforms requested in Petition 4-783 are necessary to ensure that the hardships that I faced, along with those of many pre-Dodd-Frank whistleblowers, are not repeated.

Respectfully yours,

Sherron S. Watkins

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⁴ See 17 C.F.R. § 202.10.

⁵ *Id.*