

THE BUREAU OF INVESTIGATIVE JOURNALISM

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Via email rule-comments@sec.gov.
Ms. Vanessa Countryman
Secretary, U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Re: Comment on Petition No. 4-783
Dodd-Frank Act Coverage for News Media Whistleblowers

Dear Vanessa Countryman:

On behalf of the Bureau of Investigative Journalism [website located at <https://www.thebureauinvestigates.com/>] I am writing to express strong support for the rulemaking petition filed by the U.S. National Whistleblower Center on behalf of whistleblowers who make disclosures through the news media. See Petition filed in Petition No. 4-783 (Dodd-Frank Act Coverage for Media Whistleblowers).

The Bureau of Investigative Journalism is an award winning 1 independent non-profit media organization located in the United Kingdom that engages with whistleblowers and other sources to produce high-quality articles that have national and international impact. 2 As is fully documented on our website, we work jointly with numerous highly respected media sources and publish articles related to corporate misconduct involving public companies with leading media outlets such as the Guardian, New York Times, LA Times, Daily Telegraph, Time, Bloomberg, Financial Times, BBC and ITV. Collaborative reporting with numerous newspapers, and television and radio stations enables our reporters (and their whistleblower-sources) to reach a large, worldwide audience with high-quality investigative reporting.

1 A summary of our journalistic awards are posted on our website, at <https://www.thebureauinvestigates.com/about-us/our-news>.

2 As explained on our webpage, “investigative journalism plays a key role in keeping democracy strong, power accountable and societies more just. That is why we focus on in-depth, rigorous investigations that can make a real difference at a global, national or local level.” Online at: <https://www.thebureauinvestigates.com/about-us>.

3 In addition to the numerous media outlets specifically referenced on our webpage (with references to the stories they published), our annual report further documents other media that we formally collaborate with on a regular basis: The Economist, Rolling Stone, L’Express, El Mundo, The Nation,

One of our goals is to ensure that our stories have impact, which includes using the information provided by our sources to alert responsible government agencies, such as the U.S. Securities

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and Exchange Commission (SEC) to open investigations and hold those who violate the law and harm the public interest accountable. This is one of our stated purposes.

4 Many of the whistleblowers we work with, and stories we publish, are clearly within the regulatory interest of the U.S. Securities and Exchange Commission. As set forth on our website, some of the areas we cover and have published numerous stories in leading publications include:

Corporate frauds [<https://www.thebureauinvestigates.com/projects/corporations>];

High Frequency Trading [<https://www.thebureauinvestigates.com/projects/high-frequency-trading>];

Money laundering by publicly traded banks, such as HSBC

[<https://www.thebureauinvestigates.com/stories/2021-07-28/money-laundering-ring-pushed-4.2bn-through-hsbc>];

Foreign bribery [<https://www.thebureauinvestigates.com/stories/2021-09-13/bats-agents-brokered-zimbabwe-bribe-proposal-smoke-screen>];

Misleading statements by publicly traded companies

[<https://www.thebureauinvestigates.com/stories/2022-08-28/philip-morris-misleading-public-about-nicotine-in-heated-tobacco>];

ESG violations and environmental misconduct by public companies

[<https://www.thebureauinvestigates.com/projects/environment>];

Abuses by Big Tech companies, such as Facebook

[<https://www.thebureauinvestigates.com/stories/2022-02-20/facebook-accused-of-letting-activists-ignite-ethnic-massacres-with-hate-and-misinformation-by-survivors-in-ethiopia>].

We have reviewed the petition filed by the National Whistleblower Center (NWC). The relief they request is urgently needed. Whistleblowers who contact our organization, or who work with other news outlets (including those that we jointly publish stories with), should not be prejudiced because they exercise their fundamental human right to disclose wrongdoing through the news media. Without question, reports to the news media can play an instrumental role in protecting the public, including innocent investors who are often the victims of securities and bank frauds.

As stated on our website, our journalism is intended to “drive real-world change.”

<https://www.thebureauinvestigates.com/blog/2022-08-12/beyond-the-headlines-how-our-journalism-drives-real-world-change>.

As is fully explained in the NWC’s petition, the U.S. whistleblower law permits whistleblowers to provide information directly to the news media and qualify for protections and compensation under the most important corporate accountability law, known as the Dodd-Frank Act. However, as explained by the NWC, the SEC has established two rules that radically undermine these rights. None of these rules are required under the law, and both of these rules directly conflict with the law’s explicit recognition that news media whistleblowers have equal legal protection as do employees who do not make disclosures to the press.

The first rule creates an absurd legal fiction that acts to deny whistleblowers coverage who voluntarily provide information to the news media that is thereafter used by the SEC to hold criminals accountable. Under this rule, although a whistleblower is completely voluntary, and often risks their job and safety to make a voluntary disclosure to the media, the SEC can use a legal fiction to find them non-voluntary, and deny them coverage.

This rule turns reality on its head. It is a threat to freedom of the press and prejudices whistleblowers who report violations to the news media, instead of quietly reporting violations to corporate officials who are often implicated in the crimes.

The second rule is equally prejudicial. The SEC, by a regulation not required under law, mandates that in order for a whistleblower to obtain compensation or an award under the Dodd-Frank Act, the whistleblower must provide the information to the SEC on a specific form. However, whistleblowers who first disclose their information to the news media obviously do not fill out the SEC's required form before making a report. Furthermore, most (if not all) of the whistleblowers who come to our organization have absolutely no idea that they have to fill out a form to be covered.

Filing the form has strict timing requirements (some of which require the form to be filled out within 30-days of any contact with any U.S. government authorities). The bottom line is clear. If the SEC learns about a violation of law from information a whistleblower voluntarily provided to the news media, that whistleblower is obviously a voluntary source and meets the "voluntary" requirement in the law. If the SEC thereafter relies on the information provided by the whistleblower through the news media, that whistleblower should be fully protected, equal to the whistleblower who filed the technically required paperwork. 5

5 We are also very concerned that the SEC regulations have made provisions that whistleblowers who fail to follow the strict "voluntary" and filing requirements, but who do not report their concerns to the news media, have obtained exemptions to these regulations. As explained by the National Whistleblower Center, a corporate employee who quietly reports a violation to a company's corporate lawyers is exempted from the strict application of these two rules, even if that disclosure results in years of continuing harm to investors, the environment, the public health, privacy rights, and democratic institutions (caused by bribery) because there was no public disclosure of the scandal. The U.S.

We have no issue with any of the regulations of the SEC requiring a whistleblower to demonstrate that they were in fact the source of valuable information to the news media. Likewise, the rules requiring that they provide truthful information to law enforcement (either directly or indirectly) and that their original information was in fact relied upon by the U.S. authorities to sanction a wrongdoer are reasonable. However, whistleblowers should not be harmed or lose their rights if they decide to report their allegations initially to the news media. We hereby request that the SEC take action, either by amending the current rules or issuing a decision and/or policy statement implementing the reforms proposed by the legal experts who work with the National Whistleblower Center.

Thank you for your careful attention to this extremely important issue.

Meirion Jones

Editor

The Bureau of Investigative Journalism

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