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Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1009

RE: Comments on File No. S7-16-18 (Amendments to the Commission’s Whistleblower Program Rules)

Dear Secretary Fields,

The Cornell Securities Law Clinic (the “Clinic”) submits this comment to the U.S. Securities and Exchange Commission (the “Commission”) in regard to the proposed amendments to the Whistleblower Program Rules, Release No. 34-83557; File No. S7-16-18 (the “Proposal”).

We write particularly to oppose (1) the proposed discretionary adjustments of large awards and (2) the proposed modification of the definition of “related action” to eliminate double-recovery. Both of these proposed amendments would significantly limit the potential awards for whistleblowers, thereby effectively discouraging or disincentivizing would-be whistleblowers from coming forward.

I. Discretionary Adjustment of Large Awards

The Proposal calls to empower the Commission to make discretionary adjustments of awards to amounts the Commission determines to “more appropriately achieve[] the [whistleblower] program’s objectives of rewarding

meritorious whistleblowers.”¹ In practice, this proposal will most likely result in downward-adjustments of large whistleblower awards and effectively discourage would-be whistleblowers from coming forward with their information.

Although the Commission “anticipates” that it will consider “the personal and professional sacrifices [the whistleblower makes] in reporting the information”² when deciding whether to adjust the award, such anticipations are less than reassuring. Each and every potential whistleblower thoroughly and carefully makes these considerations themselves before deciding whether to come forward and nobody will choose to do so if they fear their potential reward might not outweigh their guaranteed sacrifices. Such fears would be substantiated by a rule that allows the Commission to adjust the whistleblower’s award down below what the whistleblower decided was sufficient to outweigh their personal and professional sacrifices. The proposal’s parallel possibility of upward-adjustment is unlikely to motivate whistleblowing because the sacrifices would be guaranteed while any possibility of extra gains would be uncertain.

II. Redefining “Related Action”

Modifying the definition of “related action” to eliminate double-recovery would also disincentivize whistleblowing. In situations where an individual would be rewarded under a different program with an award cap substantially lower than their desired compensation (e.g., FIRREA’s \$1.6 million limit), that would-be whistleblower would not come forward with his or her information when they otherwise would have. Such a rule that substantially limits a whistleblower’s award—their only incentive—would work against the Commission’s goal to foster a whistleblower-friendly environment.

¹ Whistleblower Program Rules, 83 Fed. Reg. 34702 (proposed July 20, 2018).

² *Id.*, footnote 8.

Conclusion

For the foregoing reasons, the Clinic opposes the proposed amendments to the Commission's Whistleblower Program Rules.

Respectfully submitted,

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