UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIR

January 5, 2015

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
B301C Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Waters:

Thank you for your October 27, 2014 letter expressing concern that certain corporate practices may be deterring whistleblowers from reporting violations of the federal securities laws.

Pursuant to Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission created a whistleblower program designed to encourage the submission of high-quality information to aid Division of Enforcement staff in discovering and prosecuting violations of the federal securities laws. The number of whistleblower tips received by the Commission has increased each year the program has been in operation. During Fiscal Year 2014, we received 3,620 whistleblower tips from around the world, a more than a 20% increase from Fiscal Year 2012, the first year for which we have full-year data. Staff in the Commission's Office of the Whistleblower currently are tracking hundreds of ongoing investigations involving whistleblower tips that either caused Enforcement staff to open an investigation or which were forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. The Commission has a public hotline that has been in operation since May 2011 to respond to questions about the whistleblower program, and during Fiscal Year 2014, staff returned over 2,700 calls from members of the public.

Since the inception of the whistleblower program in August 2011, the Commission has made awards to fourteen whistleblowers totaling nearly $50 million. In September, we made an award of over $30 million – our highest award to date under the program – to a whistleblower who provided information of an ongoing fraud that otherwise would have been difficult to detect. We hope that awards like these will incentivize corporate insiders and others with potentially relevant information about violations of the federal securities laws to come forward and report their information to the Commission.

Even with the early success of the program, I share your concerns about the misuse of employee confidentiality, severance, and other kinds of agreements to hinder an employee's ability to report potential wrongdoing to the Commission. To address issues such as this, the Commission adopted Rule 21F-17(a), which makes it an independent violation of the Commission's rules for any person to "take any action to impede an individual from

communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications."[1] This rule provides the Commission with express authority to take action whenever we find that otherwise legitimate employment agreements are being used in a manner that discourages or curtails employee whistleblowing. Although I cannot comment on any specific ongoing investigation, enforcing this provision is a high priority for our whistleblower program.

Commission staff are focused on cases in which the use of confidentiality or other agreements may violate this Commission rule, and will continue to concentrate on practices that may result in silencing employees from reporting securities violations to the Commission by threatening liability or employee discipline. In appropriate cases, I expect the Commission will bring enforcement actions under Rule 21F-17(a).

I also share your concern about retaliation against employees who report violations of the federal securities laws. Section 21F(h)(1) of the Securities Exchange Act of 1934, enacted by section 922 of the Dodd-Frank Act, prohibits any form of retaliation against Commission whistleblowers. To implement these protections, the Commission adopted Exchange Act Rule 21F-2(b)(2), which expressly provides that Section 21F(h)(1) is enforceable in an action or proceeding brought by the Commission. On June 16, 2014, the Commission exercised its anti-retaliation authority in charging hedge fund advisory firm Paradigm Capital Management, Inc. with retaliating against an employee for reporting prohibited principal transactions to the Commission.[2] The Commission's order found that, after the head trader notified Paradigm of the report to the Commission, the company immediately began engaging in a series of retaliatory behavior, including removing the whistleblower from the head trader position, stripping the whistleblower of supervisory responsibilities, and changing the whistleblower's job function from head trader to a full-time compliance assistant. The Commission's action against Paradigm illustrates our commitment to taking strong enforcement action when we find that individuals have been subject to discharge, demotion, threats, harassment, or any other manner of discrimination in their employment by reason of their lawful whistleblowing activity.

The Commission is similarly committed to defending the anti-retaliation provisions of its whistleblower rules from challenges arising in private lawsuits alleging unlawful retaliation brought by whistleblowers under Section 21F(h)(1)(B) of the Exchange Act. In that context, several defendants to such suits have challenged the validity of Exchange Act Rule 21F-2(b)(1), which provides that individuals who make certain whistleblower disclosures, including internal disclosures of unlawful conduct to a public company's compliance officials, are entitled to employment anti-retaliation protection irrespective of whether the individuals have made a separate whistleblower disclosure to the Commission. The Commission has filed *amicus curiae*

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[1] 240 C.F.R. § 21F-17(a).

[2] *See In the Matter of Paradigm Capital Management, Inc. and Candace King Weir*, Release No. 34-72393 (June 16, 2014), *available at* http://www.sec.gov/litigation/admin/2014/34-72393.pdf. Paradigm and Weir agreed to jointly and severally pay over $2.2 million to settle the Commission's charges.

briefs defending Rule 21F-2(b)(1) in four cases to date,[3] and Commission staff will continue to monitor ongoing private litigation so that the Commission may file similar briefs defending Rule 21F-2(b)(1) in appropriate cases.

While making significant awards to deserving whistleblowers is an integral part of the Commission's whistleblower program, it is equally important to ensure the unimpeded right of employees to report wrongdoing to the Commission. For whistleblowers to come forward, they must feel assured that they will be protected.

Thank you again for your letter. Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Tim Henseler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if you have any questions or comments.

Sincerely,

Mary Jo White
Chair

[3] *Liu v. Siemens AG*, No. 13-4385 (2d Cir.); *Doe v. Oppenheimer Asset Mgt., Inc.*, No. 14-cv-00779 (S.D.N.Y.); *Peters v. LifeLock Inc.*, No. 14-cv-00576 (D. Ariz.); and *Lutzeier v. Citigroup Inc.*, No. 14-cv-00183 (E.D. Mo.).