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17 November 2010

Securities and Exchange Commission  
Office of FOIA and Privacy Act Operations  
100 F Street, NE  
Washington, DC 20549-2736

Re: FOIA Request – Proposed Rules (Part I: October 25th Meeting)

To Whom It May Concern:

This is a request on behalf of the National Whistleblower Center (“NWC”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for records pertaining to contacts between the “regulated community” and the Securities and Exchange Commission (“SEC”) regarding the “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,” released by the Commission on 3 November 2010 (“Proposed Rules”). Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, please produce all documents directly or indirectly related to the following:

1. All notes taken by any employee of the SEC at the October 25th meeting.
2. All documents in the control or possession of the following SEC employees directly or indirectly related to the October 25th meeting: Sarit Klein, Thomas Sporkin, Brian Ochs, Jordan Thomas, William Shirey, Tom Karr and/or Stephen Cohen.
3. All documents provided to the SEC at the October 25th meeting.
4. All documents provided to the SEC before the October 25th meeting that related to the October 25th meeting.
5. All documents provided to the SEC after the October 25th meeting that in any manner directly or indirectly concerned that meeting.
6. All documents directly or indirectly related to the October 25th meeting.
7. All documents related directly or indirectly to any contacts or communications related to the October 25th meeting.

8. All documents directly or indirectly related to any communications between any of the participants in the October 25th meeting that in any manner concerned whistleblowers and/or Section 21F of Dodd-Frank.

9. In regard to request numbers 1-8, in addition to the efforts your office is undertaking to obtain the documents requested, the following persons have been identified as having worked directly on the Proposed Rules. The offices of these persons should all be searched for relevant documents, along with all emails sent to and from these persons, along with the contents of their hard drives:

- SEC Commissioners and counsel, including Chairman Mary L. Schapiro, Commissioner Kathleen L. Casey, Commissioner Elisse B. Walter, Commissioner Luis A. Aguilar, and Commissioner Troy A. Parades;
- members of the Division of Enforcement, including Rob Khuzami, Lorin Reisner, Adam Storch, David Bergers, Tom Sporkin, Lori Walsh, Sam Waldon, Jordan Thomas, Laurita Finch and Sarit Klein;
- the Office of the General Counsel, specifically David Becker, Mark Cahn, Rich Levine, Brian Ochs, Stephen Jung and Brooks Shirey; and
- the Division of Risk, Strategy, and Financial Innovation, specifically Adam Glass, Matt Reed and Alex Lee.

The NWC is to be considered the requester for the purposes of any determinations you need to make. The law firm of National Security Counselors is *not* to be considered a requester for *any* purposes, as the firm is merely representing the interests of the NWC. Similarly, please send all FOIA correspondence to the attention of my associate Tim Cheng at 3233 P Street, NW, Washington, DC 20007.

You should not limit the search to records originated by your agency or exclude correspondence sent to outside third parties. Similarly, we request that all documents be reviewed in their entirety, and that no information be omitted on the grounds of “non-relevance.” Finally, please consider this letter an affirmative rejection of any limitation of your search to records created prior to the date of this request. To the contrary, we stipulate that this search should be restricted to records created prior to the date of the first substantive review of this request by FOIA personnel (as opposed to the date that receipt of the request was acknowledged by the FOIA office).

Lastly, you are specifically prohibited from adopting an overbroad interpretation of the terms “pertaining to,” “related to,” or “regarding” with respect to the scope of this request; an interpretation that “a request for all documents ‘related to’ a subject is overbroad because all documents ‘relate to’ others in some remote fashion” is specifically rejected. Therefore, in conclusion, you are hereby instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal

procedures available under the law. In excising material, please “black out” rather than “white out” or “cut out.” In addition, we draw your attention to President Obama’s 21 January 2009 *Memorandum for the Heads of Executive Departments and Agencies*, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” To permit us to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims. This description should include a list of the withheld documents, pursuant to *Shermco Indus. v. Sec’y of the U.S. Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Tx. 1978) (“A person cannot effectively appeal a decision about the releasability of documents . . . if he is not informed of at least a list of the documents to which he was denied access . . . and why those decisions were made. Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases.”).

### **DEFINITIONS**

For the purposes of this Freedom of Information Act request, the following terms are defined as follows:

“*Record(s)*,” means 1) all email communications to or from any individual within your agency; 2) memoranda; 3) inter-agency communications; 4) sound recordings; 5) tape recordings; 6) video or film recordings; 7) photographs; 8) notes; 9) notebooks; 10) indices; 11) jottings; 12) message slips; 13) letters or correspondence; 14) telexes; 15) telegrams; 16) facsimile transmissions; 17) statements; 18) policies; 19) manuals or binders; 20) books; 21) handbooks; 22) business records; 23) personnel records; 24) ledgers; 25) notices; 26) warnings; 27) affidavits; 28) declarations under penalty of perjury; 29) unsworn statements; 30) reports; 31) diaries; or 32) calendars, regardless of whether they are handwritten, printed, typed, mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, CDs, DVDs, or diskettes.

“*Contact(s)*” means all forms of social or professional intercourse, including, but not limited to, telephone conversations, in-person conversations, meetings, briefings, hearings, written correspondence, and electronic correspondence.

“*Communication(s)*” means all written communications, including electronic, and all records of oral communications, including, but not limited to, notes, meeting minutes, etc.

“*Regulated Community*” or “*Regulated Industry*” includes, but is not limited to:

- any person, employer or other entity subject to the regulation of the Securities and Exchange Commission (“SEC”);
- agents, lobbyists, accountants, attorneys, law firms, or other third parties that provide any services and assistance to such persons, employers, or other entities;

- any trade association (such as the Chamber of Commerce) for which any person, employer, or other entity subject to the regulation of the SEC is a member;
- any person, employer, or other entity that has ever paid any fine, penalty or reached a settlement with the United States under the False Claims Act;
- the following law firms, employers, and persons:
  - the law firm of Gibson, Dunn and Crutcher, LLP;
  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Gibson, Dunn and Crutcher, LLP;
  - any client represented by the law firm of Gibson, Dunn and Crutcher, LLP;
  - the United States Chamber of Commerce;
  - any person who is employed by the United States Chamber of Commerce, or who works/volunteers for the Chamber as a consultant, lobbyist, officer, agent, attorney, or a member of any committee or local chapter of the Chamber;
  - the law firm of Arent Fox, LLP;
  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Arent Fox, LLP;
  - any client represented by the law firm of Arent Fox, LLP;
  - the law firm of Baker, Donelson, Caldwell & Berkovitz;
  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Baker, Donelson, Caldwell & Berkovitz;
  - any client represented by Baker, Donelson, Caldwell & Berkovitz;
  - Johnson & Johnson;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Johnson & Johnson;
  - Pfizer, Inc.;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Pfizer, Inc.;
  - Tyco International; any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Tyco International;
  - Citigroup;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Citigroup;
  - Prudential;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Prudential;
  - Consolidated Edison of New York, Inc.;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Consolidated Edison of New York;
  - Kraft Foods;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Kraft Foods;
  - JP Morgan Chase & Co.;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for JP Morgan Chase & Co.;

- Mr. Barry Goldsmith (Gibson, Dunn and Crutcher);
- Molly Claflin (Gibson, Dunn and Crutcher);
- Douglas K. Chia, Assistant General Counsel & Corporate Secretary (Johnson & Johnson);
- Dan Dorsky, Senior Compliance Counsel (Tyco International);
- Gary Fair, Vice President, Corporate Internal Audit (Johnson & Johnson);
- Tara Gabbai, Assistant General Counsel (Pfizer Inc.);
- Maria C. Hermida, Chief Ethics Officer, Managing Director (Citigroup);
- Ann Kappler, VP and Chief Legal Officer, Corporate Services (Prudential);
- Carole Sobin, Corporate Secretary (Consolidated Edison Company of New York, Inc.);
- Irma Villarreal, Chief Securities Counsel & Assistant Corporate Secretary (Kraft Foods);
- Lisa M. Wells, Office of the Secretary (JP Morgan Chase & Co.);
- Edward Nowicki, Assistant General Counsel, Corporate Compliance (Pfizer, Inc.);
- the following persons who work as attorneys for the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.: Tonya Mitchem Grindon, Robert DelPriore, Matthew Heiter, Howard Hirsch, Henry Levi and Michael Rafter; and
- any person, employer, agent, attorney, lobbyist, or other entity that worked as an agent or contractor for any of the persons, employers, law firms or other entities described above.

“SEC” and/or the “*Securities and Exchange Commission*” is defined as its five Commissioners, including the Chairperson; their counsel and offices; and all of the individuals within the respective divisions and offices of the Commission who had any involvement in the Proposed Rules. This definition includes all employees, officers, consultants, advisors, and contractors.

“*Proposed Rules*” means the “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,” released by the Commission on 3 November 2010.

“*Related to the Proposed Rules*” means any proposal that was applicable to any potential rule related to any Congressional action that would eventually be enacted into law as the Dodd-Frank Act that, directly or indirectly, concerns the whistleblower provisions of Dodd-Frank (i.e. Section 21F of the Securities and Exchange Act). In other words, this definition captures communications, comments, suggestions or contacts related to whistleblower protections both before and after the Dodd-Frank Act became law.

“*October 25th Meeting*” means the meeting which took place between representatives of the SEC and some members of the regulated community held on 25 October 2010 which is referenced in the 26 October 2010 memorandum by Sarit Klein entitled “Meeting with clients of Gibson Dunn & Crutcher, LLP.” This memorandum is posted on the SEC web page. The “October 25th Meeting” also includes, but is not limited to, all communications and contacts

between any person who attended such meeting that in any manner related to the subject matters discussed at that meeting, regardless of whether these communications and/or contacts occurred before or after the meeting reflected in Klein's memo of 26 October 2010.

"October 12th Meeting" means the meeting which took place between representatives of the SEC and some members of the regulated community held on 12 October 2010 which is referenced in the 12 October 2010 memorandum entitled "Re: Meeting with representative of Baker, Donelson, Bearman, Caldwell & Berkowitz." This memorandum is posted on the SEC web page. The "October 12th Meeting" also includes, but is not limited to, all communications and contacts between any person who attended such meeting that in any manner related to the subject matters discussed at that meeting, regardless of whether these communications and/or contacts occurred before or after the meeting reflected in the memo of 12 October 2010.

### **REPRESENTATIVE OF THE NEWS MEDIA**

The NWC is hereby requesting classification as a representative of the news media. The NWC is a non-profit organization under District of Columbia law, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. According to 5 U.S.C. § 552(a)(4)(A)(ii), codifying the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The NWC has clear intent to "publish[ ] or otherwise disseminate[ ] information to the public." *Id.* at 1386 (quoting the following legislative history: 1) "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, *or other entity that is in the business of publishing or otherwise disseminating information to the public* qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). The NWC has a 20-year history of advancing whistleblowing issues to protect the right of individuals to speak out about wrongdoing in the workplace without fear of retaliation. Since 1988, the NWC has supported whistleblowers in the areas of environmental protection, nuclear safety, government ethics and corporate accountability. Lindsey Williams coordinates the NWC's effort to educate the public regarding current whistleblower issues and to gain support for whistleblowers. Ms. Williams regularly writes about whistleblowers who have contacted the NWC for assistance, and the NWC continues to monitor and investigate these matters in an effort to disseminate information to Congress and the public about the allegations raised by these whistleblowers. The NWC also sponsors several educational and assistance programs, including an online resource center on whistleblower rights, a speakers bureau of national experts and former whistleblowers, and the NWC regularly contributes to the publication of articles on the Whistleblower Protection Blog, located at

<http://www.whistleblowersblog.org>. Therefore, in accordance with the Freedom of Information Act and relevant case law, the NWC should be considered a representative of the news media.

### **REQUEST FOR FEE WAIVER AND EXPEDITED PROCESSING**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and (a)(6)(E)(i), the disclosure of the requested information is in the public interest and will likely to contribute significantly to public understanding of the operations or activities of the government. The national news media is carefully following all matters related to the whistleblower provisions of Dodd-Frank, and the National Whistleblower Center, as experts in area of law and regulation, is often called upon to speak publicly, comment or provide advice on Dodd-Frank's whistleblower provisions and the ongoing actions of the SEC. *See, e.g.,* Edward Wyatt, "For Whistleblowers, Expanded Incentives," *New York Times* (November 14, 2010).

The requested information is not primarily in the commercial interest of the requester. Instead, the request is seeking information of strong potential interest to the public. The NWC will use its editorial facilities to turn the raw materials produced pursuant to this request into a distinct work, and will distribute this analysis (and the relevant raw materials) to the concerned public. The NWC has a strong track record of utilizing such records and integrating those materials into documents and analysis released to the general public through the NWC's well-visited and highly respected blog and web site, public speaking engagements, new media interviews and presentations to Congress. *See* <http://www.whistleblowers.org>. The information requested also directly relates to current events and is of current interest to the public. Consequently, all fees related to this request must be waived and the processing of the request should be expedited.

Additionally, in accordance with 5 U.S.C. § 552(a)(6)(E)(i) there is a compelling need for expedited processing of this request. The SEC on or before April 2011 must approve the final rules concerning whistleblower protection, and the public needs access to the information requested in order to provide the SEC with full and complete comments on the proposed rules and understand how the SEC formulated its rules. There is heightened media interest, which will only become more intense as the deadline for the final rule approaches. Thus, there is a compelling need to produce the information requested herein well before the April 2011 deadline for approving the rules, so the public can rely upon this material and ensure that the final rules governing whistleblower protection are fair, adequate, reasonable, "user-friendly," and in the public interest. In this regard, it is absolutely imperative for the public to know what information the regulated community has provided the SEC, so the public can adequately respond to this information and gain a full and complete understanding of the operations of its government.

We hereby request that in accordance with the law and applicable regulations, that the processing of this Freedom of Information Act request be expedited, and that all fees be waived.

We look forward to receiving all of the documents set forth in this request within twenty days, as the law stipulates.

Please understand that due to the public's critical need to have access to this information

during the rulemaking process, will seek preliminary injunctive relief in United States District Court if all requested documents are not produced within twenty days.

**We hereby request that your office immediately inform every person who may have access to information covered under this request that they are not permitted to destroy or alter any information covered under this request, including information that may be located on emails or in computer hard-drives. Destruction of potentially responsive records after the receipt of a FOIA request is considered “contumacious conduct” by the DC Circuit. *See Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009). In the event that any records responsive to this request have been destroyed, please provide a full index of the destroyed records. Please also provide all records that mention or are otherwise related to any such destroyed records.**

If you need additional information, or would like to discuss the nature or scope of this request, please do not hesitate to contact the NWC. We remain willing to work with you or your staff in any reasonable manner in order to ensure that information the public needs to fully understand the whistleblower rule making process will be fully produced within the statutory deadline. If you wish to discuss this request, please do not hesitate to contact me at [Kel@NationalSecurityLaw.org](mailto:Kel@NationalSecurityLaw.org) or by phone at 301-728-5908, or my associate Tim Cheng at [TC@KKC.com](mailto:TC@KKC.com) or by phone at 202-342-6980.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kel McClanahan", written in a cursive style.

Kel McClanahan  
Attorney for the National Whistleblower Center



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Re: FOIA Request – Proposed Rules (Part II: October 12th Meeting)

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This is a request on behalf of the National Whistleblower Center (“NWC”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for records pertaining to contacts between the “regulated community” and the Securities and Exchange Commission (“SEC”) regarding the “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,” released by the Commission on 3 November 2010 (“Proposed Rules”). Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, please produce all documents directly or indirectly related to the following:

1. All documents directly or indirectly related to the October 12th meeting.
2. All notes taken by any employee of the SEC at the October 12th meeting.
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- members of the Division of Enforcement, including Rob Khuzami, Lorin Reisner, Adam Storch, David Bergers, Tom Sporkin, Lori Walsh, Sam Waldon, Jordan Thomas, Laurita Finch and Sarit Klein;
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- any trade association (such as the Chamber of Commerce) for which any person, employer, or other entity subject to the regulation of the SEC is a member;
- any person, employer, or other entity that has ever paid any fine, penalty or reached a settlement with the United States under the False Claims Act;
- the following law firms, employers, and persons:
  - the law firm of Gibson, Dunn and Crutcher, LLP;
  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Gibson, Dunn and Crutcher, LLP;
  - any client represented by the law firm of Gibson, Dunn and Crutcher, LLP;
  - the United States Chamber of Commerce;
  - any person who is employed by the United States Chamber of Commerce, or who works/volunteers for the Chamber as a consultant, lobbyist, officer, agent, attorney, or a member of any committee or local chapter of the Chamber;
  - the law firm of Arent Fox, LLP;
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  - any client represented by the law firm of Arent Fox, LLP;
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  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Baker, Conelson, Caldwell & Berkovitz;
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- Mr. Barry Goldsmith (Gibson, Dunn and Crutcher);
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- Maria C. Hermida, Chief Ethics Officer, Managing Director (Citigroup);
- Ann Kappler, VP and Chief Legal Officer, Corporate Services (Prudential);
- Carole Sobin, Corporate Secretary (Consolidated Edison Company of New York, Inc.);
- Irma Villarreal, Chief Securities Counsel & Assistant Corporate Secretary (Kraft Foods);
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- Edward Nowicki, Assistant General Counsel, Corporate Compliance (Pfizer, Inc.);
- the following persons who work as attorneys for the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.: Tonya Mitchem Grindon, Robert DelPriore, Matthew Heiter, Howard Hirsch, Henry Levi and Michael Rafter; and
- any person, employer, agent, attorney, lobbyist, or other entity that worked as an agent or contractor for any of the persons, employers, law firms or other entities described above.

“SEC” and/or the “Securities and Exchange Commission” is defined as its five Commissioners, including the Chairperson; their counsel and offices; and all of the individuals within the respective divisions and offices of the Commission who had any involvement in the Proposed Rules. This definition includes all employees, officers, consultants, advisors, and contractors.

“Proposed Rules” means the “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,” released by the Commission on 3 November 2010.

“Related to the Proposed Rules” means any proposal that was applicable to any potential rule related to any Congressional action that would eventually be enacted into law as the Dodd-Frank Act that, directly or indirectly, concerns the whistleblower provisions of Dodd-Frank (i.e. Section 21F of the Securities and Exchange Act). In other words, this definition captures communications, comments, suggestions or contacts related to whistleblower protections both before and after the Dodd-Frank Act became law.

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### **REPRESENTATIVE OF THE NEWS MEDIA**

The NWC is hereby requesting classification as a representative of the news media. The NWC is a non-profit organization under District of Columbia law, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. According to 5 U.S.C. § 552(a)(4)(A)(ii), codifying the ruling of *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989),

the term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The NWC has clear intent to “publish[ ] or otherwise disseminate[ ] information to the public.” *Id.* at 1386 (quoting the following legislative history: 1) “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, *or other entity that is in the business of publishing or otherwise disseminating information to the public* qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). The NWC has a 20-year history of advancing whistleblowing issues to protect the right of individuals to speak out about wrongdoing in the workplace without fear of retaliation. Since 1988, the NWC has supported whistleblowers in the areas of environmental protection, nuclear safety, government ethics and corporate accountability. Lindsey Williams coordinates the NWC’s effort to educate the public regarding current whistleblower issues and to gain support for whistleblowers. Ms. Williams regularly writes about whistleblowers who have contacted the NWC for assistance, and the NWC continues to monitor and investigate these matters in an effort to disseminate information to Congress and the public about the allegations raised by these whistleblowers. The NWC also sponsors several educational and assistance programs, including an online resource center on whistleblower rights, a speakers bureau of

national experts and former whistleblowers, and the NWC regularly contributes to the publication of articles on the Whistleblower Protection Blog, located at <http://www.whistleblowersblog.org>. Therefore, in accordance with the Freedom of Information Act and relevant case law, the NWC should be considered a representative of the news media.

### **REQUEST FOR FEE WAIVER AND EXPEDITED PROCESSING**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and (a)(6)(E)(i), the disclosure of the requested information is in the public interest and will likely to contribute significantly to public understanding of the operations or activities of the government. The national news media is carefully following all matters related to the whistleblower provisions of Dodd-Frank, and the National Whistleblower Center, as experts in area of law and regulation, is often called upon to speak publicly, comment or provide advice on Dodd-Frank's whistleblower provisions and the ongoing actions of the SEC. *See, e.g.*, Edward Wyatt, "For Whistleblowers, Expanded Incentives," *New York Times* (November 14, 2010).

The requested information is not primarily in the commercial interest of the requester. Instead, the request is seeking information of strong potential interest to the public. The NWC will use its editorial facilities to turn the raw materials produced pursuant to this request into a distinct work, and will distribute this analysis (and the relevant raw materials) to the concerned public. The NWC has a strong track record of utilizing such records and integrating those materials into documents and analysis released to the general public through the NWC's well-visited and highly respected blog and web site, public speaking engagements, new media interviews and presentations to Congress. *See* <http://www.whistleblowers.org>. The information requested also directly relates to current events and is of current interest to the public. Consequently, all fees related to this request must be waived and the processing of the request should be expedited.

Additionally, in accordance with 5 U.S.C. § 552(a)(6)(E)(i) there is a compelling need for expedited processing of this request. The SEC on or before April 2011 must approve the final rules concerning whistleblower protection, and the public needs access to the information requested in order to provide the SEC with full and complete comments on the proposed rules and understand how the SEC formulated its rules. There is heightened media interest, which will only become more intense as the deadline for the final rule approaches. Thus, there is a compelling need to produce the information requested herein well before the April 2011 deadline for approving the rules, so the public can rely upon this material and ensure that the final rules governing whistleblower protection are fair, adequate, reasonable, "user-friendly," and in the public interest. In this regard, it is absolutely imperative for the public to know what information the regulated community has provided the SEC, so the public can adequately respond to this information and gain a full and complete understanding of the operations of its government.

We hereby request that in accordance with the law and applicable regulations, that the processing of this Freedom of Information Act request be expedited, and that all fees be waived.

We look forward to receiving all of the documents set forth in this request within twenty days, as the law stipulates.

Please understand that due to the public's critical need to have access to this information during the rulemaking process, will seek preliminary injunctive relief in United States District Court if all requested documents are not produced within twenty days.

**We hereby request that your office immediately inform every person who may have access to information covered under this request that they are not permitted to destroy or alter any information covered under this request, including information that may be located on emails or in computer hard-drives. Destruction of potentially responsive records after the receipt of a FOIA request is considered "contumacious conduct" by the DC Circuit. *See Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009). In the event that any records responsive to this request have been destroyed, please provide a full index of the destroyed records. Please also provide all records that mention or are otherwise related to any such destroyed records.**

If you need additional information, or would like to discuss the nature or scope of this request, please do not hesitate to contact the NWC. We remain willing to work with you or your staff in any reasonable manner in order to ensure that information the public needs to fully understand the whistleblower rule making process will be fully produced within the statutory deadline. If you wish to discuss this request, please do not hesitate to contact me at [Kel@NationalSecurityLaw.org](mailto:Kel@NationalSecurityLaw.org) or by phone at 301-728-5908, or my associate Tim Cheng at [TC@KKC.com](mailto:TC@KKC.com) or by phone at 202-342-6980.

Respectfully submitted,



Kel McClanahan  
Attorney for the National Whistleblower Center



# NATIONAL SECURITY COUNSELORS

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17 November 2010

Securities and Exchange Commission  
Office of FOIA and Privacy Act Operations  
100 F Street, NE  
Washington, DC 20549-2736

Re: FOIA Request – Proposed Rules (Part III: General Contacts)

To Whom It May Concern:

This is a request on behalf of the National Whistleblower Center (“NWC”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for records pertaining to contacts between the “regulated community” and the Securities and Exchange Commission (“SEC”) regarding the “Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934,” released by the Commission on 3 November 2010 (“Proposed Rules”). Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, please produce all documents directly or indirectly related to the following:

1. All documents contained in “File No. DF-Title IX Whistleblower” that are not currently posted in the SEC’s website.
2. All documents directly or indirectly related to any contacts or communications between the regulated industry and the SEC concerning the Proposed Rules.
3. All documents directly or indirectly related to any contacts or communications between the regulated industry and the SEC related to the Proposed Rules.
4. All documents concerning the rules the SEC should propose or approve provided to the SEC by the regulated community in anticipation that Congress may enact whistleblower protection or reward provisions in the legislation that would eventually be signed into law as the Dodd-Frank Act.
5. All documents directly or indirectly related to any communications initiated by any employee or Commissioner of the SEC with regulated community related in any manner to the Proposed Rules.

6. All documents directly or indirectly related to any contacts or communications the following SEC employees had with the regulated community that was in any manner related to the Proposed Rules: Sarit Klein, Thomas Sporkin, Brian Ochs, Jordan Thomas, William Shirey, Tom Karr and/or Stephen Cohen.

7. All documents provided by any person from the regulated community that were relied upon, directly or indirectly, for the development of the Proposed Rules.

8. All documents directly or indirectly related to any communications between the SEC and the following persons directly or indirectly related to the Proposed Rules:

- The law firm of Gibson, Dunn and Crutcher, LLP;
- Any client represented by the law firm of Gibson, Dunn and Crutcher, LLP;
- The U.S. Chamber of Commerce;
- The law firm of Arent Fox, LLP;
- Any client represented by the law firm of Arent Fox, LLP;
- The law firm of Baker, Donelson, Caldwell & Berkovitz;
- Any client represented by Baker, Donelson, Caldwell & Berkovitz;
- Johnson & Johnson;
- Pfizer, Inc.;
- Tyco International;
- Citigroup;
- Prudential;
- Consolidated Edison of New York, Inc.;
- Kraft Foods;
- JP Morgan Chase & Co.;
- Barry Goldsmith (Gibson, Dunn and Crutcher);
- Molly Claflin (Gibson, Dunn and Crutcher);
- Douglas K. Chia, Assistant General Counsel & Corporate Secretary (Johnson & Johnson);
- Dan Dorsky, Senior Compliance Counsel (Tyco International);
- Gary Fair, Vice President, Corporate Internal Audit (Johnson & Johnson);
- Tara Gabbai, Assistant General Counsel (Pfizer Inc.);
- Maria C. Hermida, Chief Ethics Officer, Managing Director (Citigroup);
- Ann Kappler, VP and Chief Legal Officer, Corporate Services (Prudential);
- Carole Sobin, Corporate Secretary (Consolidated Edison Company of New York, Inc.);
- Irma Villarreal, Chief Securities Counsel & Assistant Corporate Secretary (Kraft Foods);
- Lisa M. Wells, Office of the Secretary (JP Morgan Chase & Co.);
- Edward Nowicki, Assistant General Counsel, Corporate Compliance (Pfizer, Inc.);
- The following attorneys from the law firm of Baker, Donelson, Bearman,

Caldwell & Berkowitz, P.C.: Tonya Mitchem Grindon, Robert DelPriore, Matthew Heiter, Howard Hirsch, Henry Levi, and Michael Rafter.

9. All documents directly or indirectly related to any and all contacts or communications received by any person outside of the SEC who took the position that Dodd-Frank whistleblower reward provisions were not retroactively applicable to violations that occurred prior to the enactment of the law.

10. Every document provided by any person in the regulated community to the SEC that was relied upon, directly or indirectly, as a basis for the Proposed Rules.

11. In regard to the Proposed Rules, every document provided by the Regulated Community that was directly used for drafting this proposal. In this regard, if any member of the Regulated Community provided draft language for the Proposed Rules, that was either directly incorporated or used as a basis for the rule, documents that contain those suggestions must be produced.

12. All documents related to any actual contacts between employees of the SEC and members of the regulatory community, including whatever notices need to be filed with the SEC to document meetings with lobbyists and/or to obtain waivers of ethics rules regarding contacts with actual or potential lobbyists or the Regulated Community.

13. In regard to request numbers 1-12, in addition to the efforts your office is undertaking to obtain the documents requested, the following persons have been identified as having worked directly on the Proposed Rules. The offices of these persons should all be searched for relevant documents, along with all emails sent to and from these persons, along with the contents of their hard drives:

- SEC Commissioners and counsel, including Chairman Mary L. Schapiro, Commissioner Kathleen L. Casey, Commissioner Elisse B. Walter, Commissioner Luis A. Aguilar, and Commissioner Troy A. Parades;
- members of the Division of Enforcement, including Rob Khuzami, Lorin Reisner, Adam Storch, David Bergers, Tom Sporkin, Lori Walsh, Sam Waldon, Jordan Thomas, Laurita Finch and Sarit Klein;
- the Office of the General Counsel, specifically David Becker, Mark Cahn, Rich Levine, Brian Ochs, Stephen Jung and Brooks Shirey; and
- the Division of Risk, Strategy, and Financial Innovation, specifically Adam Glass, Matt Reed and Alex Lee.

The NWC is to be considered the requester for the purposes of any determinations you need to make. The law firm of National Security Counselors is *not* to be considered a requester for *any* purposes, as the firm is merely representing the interests of the NWC. Similarly, please send all FOIA correspondence to the attention of my associate Tim Cheng at 3233 P Street, NW, Washington, DC 20007.

You should not limit the search to records originated by your agency or exclude correspondence sent to outside third parties. Similarly, we request that all documents be

reviewed in their entirety, and that no information be omitted on the grounds of “non-relevance.” Finally, please consider this letter an affirmative rejection of any limitation of your search to records created prior to the date of this request. To the contrary, we stipulate that this search should be restricted to records created prior to the date of the first substantive review of this request by FOIA personnel (as opposed to the date that receipt of the request was acknowledged by the FOIA office).

Lastly, you are specifically prohibited from adopting an overbroad interpretation of the terms “pertaining to,” “related to,” or “regarding” with respect to the scope of this request; an interpretation that “a request for all documents ‘related to’ a subject is overbroad because all documents ‘relate to’ others in some remote fashion” is specifically rejected. Therefore, in conclusion, you are hereby instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please “black out” rather than “white out” or “cut out.” In addition, we draw your attention to President Obama’s 21 January 2009 *Memorandum for the Heads of Executive Departments and Agencies*, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” To permit us to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims. This description should include a list of the withheld documents, pursuant to *Shermco Indus. v. Sec’y of the U.S. Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Tx. 1978) (“A person cannot effectively appeal a decision about the releasability of documents . . . if he is not informed of at least a list of the documents to which he was denied access . . . and why those decisions were made. Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases.”).

## **DEFINITIONS**

For the purposes of this Freedom of Information Act request, the following terms are defined as follows:

“*Record(s)*,” means 1) all email communications to or from any individual within your agency; 2) memoranda; 3) inter-agency communications; 4) sound recordings; 5) tape recordings; 6) video or film recordings; 7) photographs; 8) notes; 9) notebooks; 10) indices; 11) jottings; 12) message slips; 13) letters or correspondence; 14) telexes; 15) telegrams; 16) facsimile transmissions; 17) statements; 18) policies; 19) manuals or binders; 20) books; 21) handbooks; 22) business records; 23) personnel records; 24) ledgers; 25) notices; 26) warnings; 27) affidavits; 28) declarations under penalty of perjury; 29) unsworn statements; 30) reports; 31) diaries; or 32) calendars, regardless of whether they are handwritten, printed, typed,

mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, CDs, DVDs, or diskettes.

*“Contact(s)”* means all forms of social or professional intercourse, including, but not limited to, telephone conversations, in-person conversations, meetings, briefings, hearings, written correspondence, and electronic correspondence.

*“Communication(s)”* means all written communications, including electronic, and all records of oral communications, including, but not limited to, notes, meeting minutes, etc.

*“Regulated Community”* or *“Regulated Industry”* includes, but is not limited to:

- any person, employer or other entity subject to the regulation of the Securities and Exchange Commission (“SEC”);
- agents, lobbyists, accountants, attorneys, law firms, or other third parties that provide any services and assistance to such persons, employers, or other entities;
- any trade association (such as the Chamber of Commerce) for which any person, employer, or other entity subject to the regulation of the SEC is a member;
- any person, employer, or other entity that has ever paid any fine, penalty or reached a settlement with the United States under the False Claims Act;
- the following law firms, employers, and persons:
  - the law firm of Gibson, Dunn and Crutcher, LLP;
  - any employee, agent, lobbyist, attorney, or associate employed by the law firm of Gibson, Dunn and Crutcher, LLP;
  - any client represented by the law firm of Gibson, Dunn and Crutcher, LLP;
  - the United States Chamber of Commerce;
  - any person who is employed by the United States Chamber of Commerce, or who works/volunteers for the Chamber as a consultant, lobbyist, officer, agent, attorney, or a member of any committee or local chapter of the Chamber;
  - the law firm of Arent Fox, LLP;
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  - any client represented by Baker, Donelson, Caldwell & Berkovitz;
  - Johnson & Johnson;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Johnson & Johnson;
  - Pfizer, Inc.;
  - any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Pfizer, Inc.;

- Tyco International; any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Tyco International;
- Citigroup;
- any employee, agent, lobbyist, attorney, or associate employed by or who performs any services for Citigroup;
- Prudential;
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- Consolidated Edison of New York, Inc.;
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- Kraft Foods;
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We hereby request that in accordance with the law and applicable regulations, that the processing of this Freedom of Information Act request be expedited, and that all fees be waived.

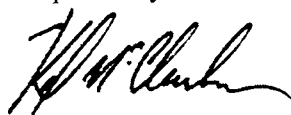
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Please understand that due to the public's critical need to have access to this information during the rulemaking process, will seek preliminary injunctive relief in United States District Court if all requested documents are not produced within twenty days.

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If you need additional information, or would like to discuss the nature or scope of this request, please do not hesitate to contact the NWC. We remain willing to work with you or your staff in any reasonable manner in order to ensure that information the public needs to fully understand the whistleblower rule making process will be fully produced within the statutory deadline. If you wish to discuss this request, please do not hesitate to contact me at [Kel@NationalSecurityLaw.org](mailto:Kel@NationalSecurityLaw.org) or by phone at 301-728-5908, or my associate Tim Cheng at [TC@KKC.com](mailto:TC@KKC.com) or by phone at 202-342-6980.

Respectfully submitted,



Kel McClanahan

Attorney for the National Whistleblower Center