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United States Government Accountability Office
Washington, DC 20548

B-322106

June 27, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Securities Whistleblower
Incentives and Protections*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Securities Whistleblower Incentives and Protections” (RIN: 3235-AK78). We received the rule on May 27, 2011. It was published in the *Federal Register* as a final rule on June 13, 2011, with a stated effective date of August 12, 2011. 76 Fed. Reg. 34,300.

The final rule implements section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ Section 922 directs the Commission to pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to the successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding \$1,000,000.

Enclosed is our assessment of the Commission’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the

¹ Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841 (July 21, 2010).

rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Cathy Ahn
Deputy Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"SECURITIES WHISTLEBLOWER
INCENTIVES AND PROTECTIONS"
(RIN: 3235-AK78)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) discussed the costs and benefits associated with this rulemaking. The Commission stated that it sought to strike the right balance in defining terms and otherwise implementing the whistleblower program so as not to be overly restrictive or overly broad. With these considerations in mind and after reviewing public comments, the Commission stated that it structured the definitions, interpretations, and other rule provisions seeking to (i) encourage high-quality submissions and discourage frivolous submissions; (ii) encourage whistleblowers to provide information early, rather than waiting to receive a request or inquiry from a relevant authority; (iii) minimize unnecessary burdens on whistleblowers and establish fair, transparent procedures; and (iv) promote the use of effective internal compliance programs in appropriate circumstances.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission determined that this final rule will not have a significant economic effect on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission published a proposed rule in the *Federal Register* on November 17, 2010. 75 Fed. Reg. 70,488. The Commission received more than 240 comment letters and approximately 1,300 form letters on the proposal. Commenters included individuals, whistleblower advocacy groups, public companies, corporate compliance personnel, law firms and individual lawyers, academics, professional

associations, nonprofit organizations, and audit firms. The Commission stated that it carefully considered the comments received on the proposed rule in fashioning the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains information collection requirements under the Act. The titles for the collections of information are Form TCR (Tip, Complaint or Referral) and Form WB-APP (Application for Award for Original Information Provided Pursuant to § 21F of the Securities Exchange Act of 1934). The Commission estimates that the annual burden for Form TRC to be 10,500 hours and for Form WB-APP to be 258 hours. The Commission submitted these items to the Office of Management and Budget for review.

Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 3(b), 21F, and 23(a) of the Securities Exchange Act of 1934. 15 U.S.C. §§ 78c(b), 78u-6, 78w(a).

Securities Act of 1933 and Securities Exchange Act of 1934, 15 U.S.C. §§ 77b(b), 78c(f), 78w(a)

The Commission analyzed the final rule to determine if it will promote efficiency, competition, and capital formation, and that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that the impact of this final rule on capital formation and efficiency will be generally positive and that the final rule will not impose undue burdens on competition.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.