

December 13, 2011

The Honorable Scott Garrett  
Chairman  
Subcommittee on Capital Markets and  
Government Sponsored Enterprises  
2244 Rayburn HOB  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Subcommittee on Capital Markets and  
Government Sponsored Enterprises  
2344 Rayburn HOB  
Washington, DC 20515

Dear Chairman Garrett and Ranking Member Waters:

I am writing on behalf of the Investment Company Institute\* to express support for H.R. 2483, the "Whistleblower Improvement Act of 2011," sponsored by Congressman Michael Grimm, which addresses serious concerns we have with the SEC's whistleblower program rules under Section 922 of the Dodd-Frank Act. The program directly undermines SEC Rule 38a-1, adopted in 2003 under the Investment Company Act, which requires registered investment companies and their advisers to institute comprehensive internal compliance programs. The SEC whistleblower rules encourage individuals to circumvent these highly successful compliance programs that are designed to ensure adherence with Federal securities laws.

H.R. 2483 ameliorates our concerns about the SEC's rules on internal compliance programs because it would:

- 1) preserve the viability of internal reporting regimes by requiring whistleblowers, except in limited circumstances, to report wrongdoing through internal channels before reporting to the SEC;
- 2) require the SEC to notify a registrant of a whistleblower's allegations, except in limited circumstances, so the registrant can investigate and redress the alleged violations;
- 3) prohibit whistleblowers who are involved in the misconduct from being rewarded for such misconduct; and
- 4) clarify the limits on the law's anti-retaliatory provisions.

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\*The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.3 trillion and serve over 90 million shareholders.

The Institute is concerned about the rules the SEC adopted to implement its whistleblower program under the Dodd-Frank Act. Our principal concern is that these rules fundamentally lack meaningful respect for existing internal compliance programs. While the Commission's public comments and release adopting the rules are replete with statements expressing the Commission's concern with respecting internal compliance programs and the Commission's interest in encouraging whistleblowers not to circumvent such programs, *there is absolutely nothing in the rules' text that speaks to reporting through internal compliance programs.* We find this disconnect between the Commission's public statements and its proposed rules to be very troubling.

This disconnect is particularly troubling for our members because, as stated, *each registered investment company is required by law to have a robust compliance program to ensure compliance with the Federal securities laws.* The advisers that manage these funds are under similar obligations. It bears emphasizing that these programs are subject to detailed requirements. These mandate, for example, the development of extensive written policies and procedures, the effectiveness of which must be reviewed at least annually. These programs must be overseen by a Chief Compliance Officer who reports to the fund's trustees and must account to them annually on how the compliance program is functioning.

We are also concerned about the Commission's whistleblower program not only because it ignores the existence of such robust programs, but also because it permits all employees – including senior managers, compliance professionals, and culpable individuals, among others – to first report any suspected violation of the Federal securities laws to the Commission. As noted in our comment letter to the Commission, we strongly believe that the ability of a fund to discover, whether through its internal whistleblower program as mandated by SOX or otherwise, and to redress violations of the Federal securities laws is crucial to the success of these compliance programs.

We also have concerns with the "profiteering" that can be expected to occur from the SEC's rules. As noted in our comment letter, lawyers already have launched websites and aggressive advertising campaigns and begun cold-calling financial services employees to attract whistleblowers on the promises of riches to come. We understand that one SEC attorney who allegedly was instrumental in drafting the Commission's rules has since moved to the private sector and established a whistleblower practice. Apparently he is touting his role in drafting the rules to attract clients.

Notwithstanding the concerns expressed in our comment letter on the Commission's proposed rule, the rules remain largely silent regarding the anti-retaliatory provisions in the law. As noted in our letter, that silence may lull some employees into thinking that, so long as they obtain whistleblower status under the Commission's rules, they are immune from any adverse action on their employment (*e.g.*, demotion or firing) even when the conduct in question is unrelated to the reporting of information to the Commission. Clarity about the precise protections afforded by whistleblower status is necessary for all parties.

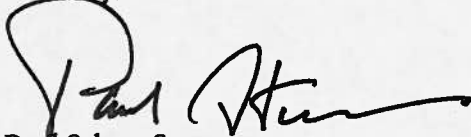
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For all these reasons, we are pleased that the Subcommittee is moving forward with legislation that redresses a number of our concerns and look forward to working with Committee members to shepherd the legislation towards enactment.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Schott Stevens". The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.

Paul Schott Stevens

President & CEO

Investment Company Institute

cc: Chairman Spencer Bachus  
Ranking Member Barney Frank