



**May 8, 2019**

The Honorable Al Green  
U.S. House of Representatives  
2347 Rayburn HOB  
Washington, DC 20515

The Honorable Bill Huizenga  
U.S. House of Representatives  
2232 Rayburn HOB  
Washington, DC 20515

Dear Representative Green and Representative Huizenga,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> and its member firms support H.R. 2515 and efforts by Congress to protect whistleblowers from retaliation by their employers for reporting potential violations of the federal securities laws and regulations.

SIFMA has supported and continues to support Congress’ and the Securities and Exchange Commission’s (“SEC”) efforts to identify and address potential violations of the securities laws. SIFMA recognizes the value of robust and effective whistleblower rules. We generally supported the SEC’s current whistleblower rules when they were first proposed in 2010.<sup>2</sup> More recently, in response to the SEC’s request for comment on proposed changes to its whistleblower program rules, we provided suggestions on how the SEC can improve the program.<sup>3</sup> SIFMA understands that the goal of this bill is to reverse the Supreme Court’s decision in *Digital Realty*,<sup>4</sup> which held that whistleblowers *must report to the SEC* to be covered by Dodd-Frank’s anti-retaliation.

---

<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Elizabeth Murphy, Secretary, SEC re: Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 (Dec. 17, 2010), <https://www.sec.gov/comments/s7-33-10/s73310-161.pdf>.

<sup>3</sup> Letter from Ira D. Hammerman, Executive Vice President and General Counsel, SIFMA, to Brent Fields, Secretary, SEC, re: Whistleblower Program Rules (Sept. 18, 2018), <https://www.sec.gov/comments/s7-16-18/s71618-4373269-175549.pdf>.

<sup>4</sup> *Digital Realty Trust, Inc. v. Somers*, 583 U.S. \_\_\_ (2018), 138 S. Ct. 767; 200 L. Ed. 2d 15.

We support this goal – that reporting to the SEC should not be a requirement for protection under the anti-retaliation provisions of Exchange Act § 21F(h)(1)(A). Importantly, we support this legislation because it extends protection to whistleblowers who report internally at privately-held companies (specified in the legislation), such as non-public broker-dealers. Protection for internal whistleblowers has been a policy goal of the SEC since the outset of its whistleblower program,<sup>5</sup> and we support efforts by Congress (and the SEC) to make clear that the anti-retaliation provisions extend to these whistleblowers as well as any other efforts to encourage internal reporting.

SIFMA continues to believe that the first and best line of defense against violations of the securities laws is a robust internal compliance program responding to internal reporting of whistleblower claims. SIFMA has long been concerned that the whistleblower rules should encourage internal corporate compliance reporting systems, which are a critical component of what the SEC has recognized is the first and most important line of defense against securities law violations.<sup>6</sup> Internal corporate compliance reporting systems are particularly important in the financial services industry, which has substantial experience developing and improving these systems, particularly since the financial crisis. Whistleblower complaints generally can be resolved most quickly, effectively and efficiently by allowing the company itself to investigate and respond in the first instance (although in many cases the SEC staff then will want to validate the conclusions of the company's internal investigation). We believe that extending the anti-retaliation provisions to internal whistleblowers would further the important policy goal of reporting potential violations of the securities laws.

Sincerely,



Mark Schuermann

Managing Director, Head of Federal Government and International Affairs

---

<sup>5</sup> See, e.g., Opening Statement of Chairman Mary L. Schapiro, Whistleblower Program (May 25, 2011) (<https://www.sec.gov/news/speech/2011/spch052511mls-item2.htm>) (“But, perhaps, no issue received more focus during this process than the role of internal compliance programs. As I have often said, internal compliance programs play an extremely valuable role in the fraud prevention arena.”).

<sup>6</sup> See e.g., Adopting Release, Implementing Whistleblower Provisions of Section 21F of the Securities Exchange Act, Exch. Act Rel. No 64545, at p. 90 (May 25, 2011) (“2011 Adopting Release”), <https://www.sec.gov/rules/final/2011/34-64545.pdf> (“compliance with the federal securities laws is promoted when companies have effective programs for identifying, correcting, and self-reporting unlawful conduct by company officers or employees”).

