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June 29, 2015

VIA CM/ECF

Catherine O'Hagan Wolfe, Esq.
Clerk of the Court
Second Circuit Court of Appeals
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Berman v. Neo@Ogilvy LLC (Case No. 14-4626)*
APPELLANT'S RESPONSE TO AMICUS SEC'S FRAP 28(j) SUBMISSION

Dear Ms. Wolfe:

On behalf of Appellant Daniel Berman, we respectfully submit this letter in response to the FRAP 28(j) submission from Amicus Security and Exchange Commission ("SEC") dated June 26, 2015. Appellant supports and adopts the reference to and discussion of the Supreme Court's recent decision in *King v. Burwell*, 2015 U.S. LEXIS 4248 (June 25, 2015).

We wish to add to the SEC's bullet point section of "odd" and "implausible" results that the Appellee's narrow reading would produce:

- It would exclude from Section 21F's employment retaliation protections individuals who happen to first report to the Department of Justice or a self-regulatory organization (*e.g.*, the Financial Industry Regulatory Authority) and experience employment retaliation before coming to the SEC, even though the award provisions authorize the SEC to pay whistleblower awards for "related actions" brought by these and similar authorities and express no preference as to how individuals sequence their reporting as between the SEC and these other authorities; and
- Notwithstanding the fact that the catchall provision itself includes individuals who report to the SEC in ways *other than those specified in* Section 21F(h)(1)(A)(i) and (ii) – such as, for example, by telephonically contacting a staff member or by pulling a staff member aside during an onsite exam – the Appellee's reading would inexplicably exclude the latter class of individuals from Section 21F's employment retaliation protections.

For these reasons, and the reasons set forth in the SEC's submission, the *King* case and the reasoning therein is directly applicable to this appeal.

Respectfully submitted,

BENNET SUSSER

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