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August 7, 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 August 5, 2015. Appellant supports and adopts the reference to and discussion of the SEC's *Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934*, Exchange Act Release No. 34-75592, 2015 WL 4624264 (Aug. 4, 2015) (the "Interpretive Release").

Appellees assertion that the SEC's interpretation is "irrelevant" is based on the fallacy that Dodd Frank has no ambiguity. As argued in Appellant's appeal, this is not the case. The anti-retaliation provision of Dodd Frank, 15 U.S.C. § 78u-6(h)(1)(A)(iii), expressly protects those who have reported wrongdoing that is "required or protected" under the Sarbanes-Oxley Act of 2002 ("SOX"), including internal corporate reports of wrongdoing made to a "person with supervisory authority over the employee." 18 U.S.C. § 1514A(1)(c). In another section, Dodd Frank defines a "whistleblower" as those who provide information to the SEC, thus contradictorily excluding those making internal reports under SOX. 15 U.S.C. § 78u-6(a)(6). However, this definition of "whistleblower," if applied mechanically, would render the above anti-retaliation provision virtually superfluous.

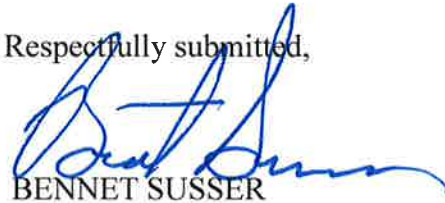
Because of this ambiguity, the SEC's interpretation is exceedingly relevant. Indeed, the agency promulgated 17 C.F.R. § 240.21F-2(b)(1) ("Rule 21F-2(b)") to address this inconsistency, and the SEC's recently issued Interpretive Release should be afforded the deference that the United States Supreme Court has consistently bestowed to administrative agencies responsible for interpreting and enforcing such statutes. *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001); *Chevron U.S.A. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

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For these reasons, and the reasons set forth in the SEC's submission and its recent Interpretive Release, Appellant respectfully submits that this should be considered and afforded deference by the Panel.

Respectfully submitted,



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