



DAVIS & GILBERT LLP  
ATTORNEYS AT LAW

1740 Broadway  
New York, NY 10019

T: 212.468.4800  
F: 212.468.4888

www.dglaw.com

Direct Dial: 212.468.4822  
Fax: 212.468.4888  
Email: hrubin@dglaw.com

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**BY CM/ECF**

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

Re: *Berman v. Neo@Ogilvy LLC*, No. 14-4626 – Appellees'  
*Letter Submitting Supplemental Authority - FRAP 28(j)*

Dear Ms. Wolfe:

As the SEC acknowledged, in *King v. Burwell* the Supreme Court looked to the overall purpose of the statute to see if enforcing its plain meaning would undermine the statute's purpose. This approach, if taken here, supports an affirmance of Judge Woods' decision.<sup>1</sup>

Dodd-Frank's legislative history shows that its stated purpose is to encourage reporting to the SEC (not internally): "The Congress intends that the SEC make awards that are sufficiently robust to motivate potential whistleblowers to share their information and to overcome the fear of risk of the loss of their positions. Unless the whistleblowers come forward, the Federal Government will not know about the frauds and misconduct."<sup>2</sup> Moreover, the drafting history shows that while the House bill originally protected "employee[s], contractor[s] or agent[s]," Congress deliberately protected only "whistleblower[s]," which it clearly defined as individuals who report to the Commission. Thus, interpreting Dodd-Frank based on the unambiguous definition of "whistleblower" does not undermine its purpose, but rather fulfills it.

Unlike the phrase "established by the State" addressed in *Burwell*, the term "whistleblower" has an exclusive definition that must "mean" the same thing each time it appears. Moreover, Dodd-Frank only works if a "whistleblower" is an individual who provides information to the SEC, since the bounty, confidentiality and other provisions of Section 21(F) only make sense if whistleblowers provide information to the SEC.

<sup>1</sup> 2015 U.S. LEXIS 4248, at \*19-20.

<sup>2</sup> 156 Cong Rec S 5902, 5929 (July 15, 2010).

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Accordingly, unlike the language at issue in *Burwell*, Dodd-Frank and its purpose are saved, not eviscerated, when the plain meaning of the words are applied.

The principles of statutory construction addressed by the Supreme Court in *Asarco* and *Burwell* confirm that the appropriate reading of Dodd-Frank is that it protects individuals for internal complaints only when those individuals meet the definition of "whistleblower" (by providing information to the SEC) since Congress had already protected purely internal reporting in SOX. Otherwise, the intent of Dodd-Frank would be undermined because individuals would have no reason to inform the government of misconduct if internal reporting provides the same protections and benefits.

Respectfully submitted,

By:           /s/ Howard J. Rubin