

December 2, 2010

To Whom it May Concern:

My firm has represented whistleblowers under various State and Federal laws for many years. I write to note a potential problem in the drafting of the new Dodd-Frank Whistleblower Protection law that was in all likelihood unintended but that could have unintended serious adverse consequences.

In the new law in two places there is repeated the following language:

“(n) Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes. -

“(1) Waiver of Rights and Remedies- The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

“(2) Predispute Arbitration Agreements.-No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.”¹

The above language appears in the **Commodities Whistleblowers Incentives and Protection** section. The purpose is to prevent employers from adding waiver language to employment agreements, separation agreements, and other agreements signed during the course of employment, that would undermine the statutory purpose of the provision. Without this language, employers with a stroke of the pen could deny a potential whistleblower any financial incentive for blowing the whistle and thereby undercut entirely the statute.

The identical language appears again in the **Securities Whistleblowers Incentives and Protection** section. The manner in which the language was drafted, however, appears to make it applicable only to Sarbanes-Oxley and not the new Dodd-Frank whistleblower law which seems to have been a function of a drafting error. It reads as follows:

¹ Nearly identical language is found in section §1057 of Dodd-Frank.

KAISER SAURBORN & MAIR, P.C.

(2) Private Securities Litigation Witnesses; Nonenforceability Information- **Section 1514A of title 18, United States Code, is amended by adding at the end the following:**

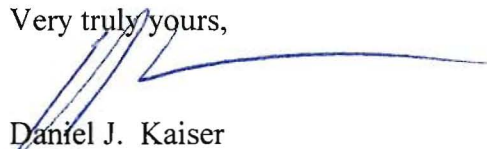
(e) Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes.....

Of course, the same reasons the no waiver language is necessary for the companion Commodities whistleblower section, which is nearly identical in all respects, are equally applicable to the SEC whistleblower section. Otherwise, the SEC whistleblower provision will be eviscerated by employers who will include waiver language in every document their employees sign. In short, the program will be gutted which is not what Congress intended.

I respectfully suggest that the Commission carefully consider this issue and consider fixes that implement Congress' intention on the "no waiver" clause.

Thank you for your attention to this matter.

Very truly yours,



Daniel J. Kaiser