UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INTERNATIONAL
AFFAIRS

29 September 2006

Mr. Peter Schaar
Chairman
Article 29 Data Protection Working Party
Directorate-General Justice, Freedom and Security
Data Protection Unit
B-1049 Bruxelles
BELGIUM

Dear Mr. Schaar:

Thank you for your letter dated 3 July 2006.

I believe that our correspondence has been constructive, and I hope that companies and their advisors will find the clarifications provided both by the Working Party and by SEC staff to be helpful in seeking to comply with both the whistleblower provisions of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") and European data protection law. I therefore would encourage you to publish this letter, as well as our letter of 8 June 2006. As stated in my prior letter, SEC staff does not opine on or interpret the laws or regulations of foreign sovereigns. As such, my letters should not be read as a position taken by the Commission or its staff with regard to either the Working Party's letter or its Opinion.

That said, I would like to address two points raised in your letter of 3 July 2006: (1) guidance regarding the information communicated to employees when accessing the whistleblower complaint system, and (2) underlying concerns regarding anonymous reporting.

With regard to the first point, I note that in your July letter, the Working Party provided operational details about the information issuers should convey to employees when first getting in touch with the whistleblowing scheme. Consistent with past Commission practice, I am not expressing any view on the specific operational details provided in your letter. The Commission has purposefully declined to mandate specific complaint processing procedures that audit committees should use. It has opted instead to allow committees the flexibility to develop procedures that best suit their circumstances and the requirements of the law. However, the Commission has expressed its view, as stated in the adopting release for its rules implementing Section 301 that "...it is imperative for the [audit] committee to cultivate open and effective channels of information." In my opinion, this view, as well as the spirit and intent of Section 301, would guide companies to afford all whistleblowers a clear and unambiguous opportunity to submit concerns regarding questionable accounting or auditing matters on a confidential, anonymous basis.

With regard to the underlying concerns regarding anonymous reporting, your letter notes that anonymous collection of data could be qualified as "unfair" in violation of Article 6(a) of Directive 95/46/EC because allowing anonymous complaints "can only increase the risk of frivolous or slanderous reports with the intention of causing the accused damage or distress." I believe it is possible for companies to establish procedures for the anonymous collection of data that adequately respect the privacy interests of individuals by including due process and due diligence safeguards. Indeed, it would seem to be in a company's own interest to do so.

We would like to reiterate our appreciation for the opportunity that you have given us to interact with you regarding the Opinion. We hope that our correspondence, once made public, will be of assistance to companies seeking to comply with Sarbanes-Oxley-mandated audit committee listing standards on complaint procedures and European data protection law.

With best regards,

Ethiopis Tafara
Director