

SEC Releases First Report on Dodd-Frank Whistleblower Program

This month the Securities and Exchange Commission (“SEC”) provided its first annual report to Congress regarding its new whistleblower program under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).¹ The Dodd-Frank Act’s whistleblower provisions have generated a great deal of attention because of the significant incentives and protections that they afford. Whistleblowers who provide original information to the SEC regarding violations of the Securities Exchange Act of 1934 are entitled to a bounty of between 10 percent and 30 percent of any amount collected from the violator in SEC actions resulting in monetary sanctions in excess of \$1 million; they are also protected against retaliatory conduct by their employers.² Although the SEC’s report contains data only for the seven weeks between the August 12, 2011 effective date for the SEC’s implementing regulations and the whistleblower program’s September 30, 2011 fiscal year end, the report provides a telling glimpse on the new incentives’ and protections’ impact on whistleblower reporting.³

In the seven-week period covered by the report, the SEC received 334 whistleblower tips from individuals in 37 states and several foreign countries. Nearly half of the whistleblower tips concerned market manipulation, offering fraud, or corporate disclosures and financials. Although nearly 10 percent of the tips came from foreign sources, to date less than 4 percent of the tips related to the [Foreign Corrupt Practices Act \(“FCPA”\)](#). However, we would expect that percentage to increase as the Dodd-Frank Act’s application to FCPA violations becomes more widely known.

Although no whistleblower awards have been distributed, the whistleblower fund is fully funded at nearly \$453 million, and the SEC has posted Notices of Covered Actions for the 170 enforcement proceedings that resulted in sanctions in excess of the \$1 million statutory threshold between July 21, 2010 and July 31, 2011. Applications pursuant to these Notices of Covered Actions were due by November 11, 2011, and the SEC is currently in the process of reviewing applicants’ eligibility for whistleblower bounties.

The data from the SEC’s initial report provides some insight into whistleblower behavior. However, the SEC points out that “[a]s a result of the relatively recent launch of the program and the small sample size, it is too early to identify any specific trends or conclusions from the data collected to date.” We will continue to monitor the SEC’s implementation of the Dodd-Frank Act’s whistleblower provisions and provide periodic updates and trend analysis.

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¹ U.S. Securities and Exchange Commission, Annual Report on the Dodd-Frank Whistleblower Protection Program Fiscal Year 2011 (Nov. 2011), available at <http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>.

² Dodd-Frank Act, 111th Cong. § 922 (2010). The Dodd-Frank Act also contains a similar provision for whistleblowers that provide original information to the Commodity Futures Trading Commission regarding a violation of the Commodity Exchange Act.

³ The SEC’s Office of the Whistleblower has begun its work by proposing and finalizing implementing regulations, hiring and training staff, establishing internal policies, and establishing a telephone hotline and a website for whistleblower reports. The Office is structured to serve an initial triage function and then transition to liaison between the whistleblower and the investigative staff in the appropriate SEC division.

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