

Resources

SEC Adopts Final Rules Interpreting the Dodd-Frank Whistleblower Program

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Cox Smith Corporate and Securities E-Alert

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On May 25, 2011, the Securities and Exchange Commission ("SEC") issued Final Rules implementing the Securities and Whistleblower Incentives and Protection program of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified in Section 21F of the Securities Exchange Act of 1934.

Despite numerous comments from public companies and corporate counsel, the SEC specifically did not require whistleblowers to report internally prior to reporting directly to the SEC.

However, the SEC implemented various incentives for employees to continue to report violations internally, including making internal submissions eligible for awards and providing a 120 day "look-back" period within which a whistleblower may report to the SEC a violation already reported internally and still receive the benefit of the internal report as the first date a violation was reported.

Rewards, Protection and Confidentiality

- The whistleblower program awards eligible whistleblowers between 10% and 30% of monetary sanctions recovered by the SEC in one or several actions stemming from the whistleblower's disclosure of information that result in sanctions totaling at least \$1 million.
- A whistleblower must meet certain criteria to be eligible for an award.
- The SEC specifically excluded certain internal compliance personnel from eligibility as whistleblowers, and also excluded information obtained by attorneys that is subject to attorney-client privilege and information obtained by auditors in the course of their investigative duties of the reporting company.
- To encourage reporting, the SEC has designed the whistleblower program to provide confidentiality to those stepping forward.
- Employees are also protected from retaliation from their employers where the whistleblowers have a reasonable belief that the information relates to a possible securities law violation.

Now more than ever, companies must be vigilant in communicating clear and straight-forward reporting procedures to employees and emphasize anti-retaliation protections provided to employees who step forward with information.

Should you have any questions or would like to discuss how the Rules could impact your entity, please contact any member of the Corporate and Securities team at Cox Smith.

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