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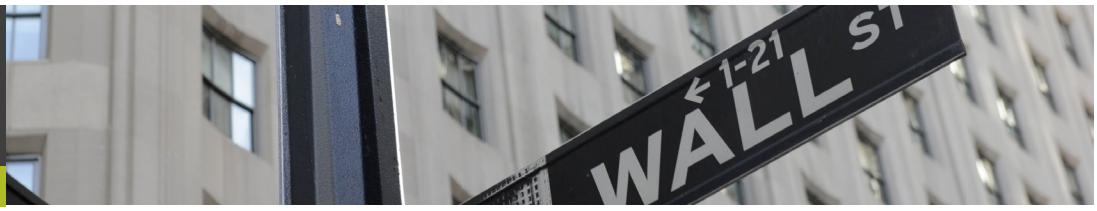

SEC Whistleblower Program Handbook

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SEC WHISTLEBLOWER PROGRAM

HANDBOOK

by

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I. BACKGROUND

In 2010, in response to a long series of corporate scandals that defrauded countless investors and shook investor confidence, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), one of the most significant financial reform efforts since the Great Depression. Section 922 of that legislation amended the Securities Exchange Act of 1934 (the "Exchange Act") by adding Section 21F, entitled "Securities Whistleblower Incentives and Protections."[1] This new Section 21F required the Securities and Exchange Commission (the "SEC" or "Commission") to enact a whistleblower program to pay financial awards to individuals who provide information about possible securities violations to the SEC.

Shortly after the passage of Dodd-Frank, the SEC made public its proposed rules to implement the new Section 21 of the Exchange Act. The proposal generated much discussion—the SEC received over 240 comment letters and about 1,300 form letters.[2] The SEC made a number of revisions to the proposed rules in response to the commentary, and on May 25, 2011, the Commission adopted the final rules governing the new whistleblower program as Regulation 21F.[3] Under these new rules, an individual who voluntarily provides the SEC with original information resulting in a successful enforcement action in which the SEC collects over $1 million in sanctions will be eligible for a financial reward of between 10% to

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He also is the editor of secwhistleblowersadvocate.com, a website dedicated to helping organizations establish a culture of integrity and courageous whistleblowers to report possible securities violations – without regrets.

1 Codified at 15 U.S.C. § 78u-6.

2 Implementation of the Whistleblower Provisions of the Securities Exchange Act of 1934, Securities and Exchange Commission, Release No. 34-64545 ("Implementation Release") at 4.

3 17 C.F.R. § 240.21F *et. seq.*

30% of the amount collected, depending on various factors. The program became effective on August 12, 2011.

The program recognizes, for the first time, that law enforcement authorities need the public's help to effectively and efficiently police the marketplace. The reality is that securities fraud schemes are often difficult to detect and prosecute without inside information or assistance from participants in the scheme, or their associates. As Sean McKessy, Chief of the SEC's Office of the Whistleblower stated in a speech at Georgetown University, the SEC "simply cannot be everywhere," and that "is why the new whistleblower program . . . is so crucial to [the Commission's] work." The program, Mr. McKessy stated, will "help [the SEC] to more quickly identify and pursue frauds that [it] might not have otherwise found on [its] own"; "strengthen [the SEC's] ability to carry [its] mission"; and "save [the SEC] much time and resources in the process."[4]

II. PROTECTIONS FOR EMPLOYEE WHISTLEBLOWERS

Dodd-Frank established new and powerful anti-retaliation protections for individuals who act as whistleblowers, including a new private right of action for employees subjected to retaliatory action from their employer. The Act also significantly improved existing whistleblower-protection laws, most notably the relevant provisions of the Sarbanes-Oxley Act of 2002 ("SOX"). Many whistleblowers are also eligible for other federal and state whistleblower protections.

A. New Anti-Retaliation Protections for SEC Whistleblowers

Under the new Section 21F of the Exchange Act, an employer may not discharge, demote, suspend, threaten, harass, or take any other retaliatory action against an employee who either:

(i) provides information about his or her employer to the SEC in accordance with the whistleblower rules;

(ii) initiates, testifies in, or assists in an investigation or judicial or administrative action; or

(iii) makes disclosures that are required or protected under SOX, the Exchange Act, and any other law, rule, or regulation subject to the jurisdiction of the Commission.[5]

In the event of a retaliatory act, Section 21F(h) grants an automatic private right of action in federal court to all employees who are subjected to the retaliatory act, without the need to exhaust administrative remedies prior to filing.[6] This right of action, moreover, is not limited to employees of publicly traded companies and its subsidiaries. The remedies available to a plaintiff under this section include reinstatement to the same seniority, double

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[4] Transcript available at http://www.sec.gov/news/speech/2011/spch081111sxm.htm (last visited January 10, 2012).

[5] Exchange Act § 21F (h)(1)(A)(i)-(iii).

[6] *Id.* at § 21F(h)(1)(B)(i).

back pay, and litigation costs (including attorneys' fees and expert witness fees).[7] An employee suing under this section must file the claim no later than six years from the retaliatory conduct or three years from when the employee knew, or reasonably should have known, of the retaliatory conduct, but in no event to exceed 10 years after the date of the violation.[8]

To be eligible for these anti-retaliatory protections, the whistleblower rules established by the SEC provide that the whistleblower must possess a "reasonable belief" that the information provided relates to a possible securities violation, and the information must be submitted in accordance with the procedures set forth in the rules (*see* Section IV).[9] According to the SEC, a whistleblower has a "reasonable belief" if he or she holds a subjectively genuine belief that the information demonstrates a possible violation, *and* that this belief is one that a similarly situated employee might reasonably possess.[10] Furthermore, the information must demonstrate a "possible violation," which requires, at minimum, a facially plausible relationship to some securities law violation, thus eliminating frivolous submissions from eligibility.[11]

At least one federal court has held that the prohibition against retaliation and the private right of action apply to an employee who makes a disclosure required or protected by law—like a disclosure under SOX, for instance—under Section 21F(h)(1)(A)(iii), even if that employee did not provide the disclosed information to the SEC.[12] In other words, the employee would still be protected from retaliation, and could still bring a claim in the event of a retaliatory act, even if he or she would not otherwise qualify as a "whistleblower" for purposes of receiving an award. This holding is consistent with the statute and the whistleblower rules; indeed, even a statutory whistleblower is entitled to the anti-retaliation protections, regardless of whether he or she eventually qualifies for an award.[13]

It is important to note that these anti-retaliation protections do not go into effect until an employee reports the possible securities violation to the SEC in accordance with the whistleblower program's rules or otherwise makes a protected disclosure pursuant to Section 21F(h)(1)(A)(iii). Reporting internally does not typically satisfy this important procedural requirement.

B. Enhancement of SOX Employee Protections

Dodd-Frank also enhanced the employee protections established in SOX. In particular, the statute expanded SOX coverage beyond just public companies to employees of affiliates and subsidiaries of publicly traded companies "whose financial information is included in the consolidated financial statements of such publicly traded company."[14] This includes foreign

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[7] *Id.* at § 21F(h)(1)(C)(i)-(iii).

[8] *Id.* at § 21F(h)(1)(B)(iii).

[9] 17 C.F.R. § 240.21F-2(b).

[10] Implementation Release at 16 (emphasis original).

[11] *Id.* at 13.

[12] *Egan v. TradingScreen, Inc.*, No. 10 Civ. 8202, 2011 WL 1672066, *5 (S.D.N.Y. May 4, 2011).

[13] Implementation Release at 18.

[14] Pub. L. 111-203, § 929A.

subsidiaries and affiliates of U.S. public companies.[15] Thus, Dodd-Frank now provides extraterritorial reach in actions brought by the SEC and the Justice Department.[16] Furthermore, Dodd-Frank expands SOX coverage to employees of nationally recognized statistical ratings organizations, such as Moody's Investors Service Inc., A.M. Best Company Inc., and Standard & Poor's Ratings Service.[17]

Finally, Dodd-Frank doubles the statute of limitations for SOX whistleblower claims from 90 to 180 days; provides for a jury trial for claims brought under SOX whistleblower protections; and declares void any "agreement, policy form, or condition of employment, including a predispute arbitration agreement" which waives the rights and remedies afforded to SOX whistleblowers.[18]

C. New Protections for Financial Service Employees

Congress, in enacting Dodd-Frank, also created the Consumer Financial Protection Bureau to protect whistleblowing employees who work for a financial products or services company. A "financial products or services" company is any company that: extends credit or service or broker loans; provides real estate settlement services or performs property appraisals; provides financial advisory services to consumers relating to proprietary financial products (including credit counseling); and collects, analyzes, maintains, or provides consumer report information or other account information in connection with any decision regarding the offering or provision of consumer financial product or service.[19]

Employees of such companies cannot be retaliated against for any of the following:

(i) testifying or expressing the willingness to testify in a proceeding for administration or enforcement of Dodd-Frank;

(ii) filing, instituting or causing to be filed or instituted, any proceeding under any federal consumer financial law; or

(iii) objecting to, or refusing to participate in any activity, practice, or assigned task that the employee reasonably believes to be a violation of any law, rule, standard, or prohibition subject to the jurisdiction of the Bureau.[20]

A financial services employee who is subjected to retaliation must file a complaint within 180 days of the retaliatory conduct with the Secretary of Labor, and may seek *de novo* review in federal district court within 120 days of the Secretary of Labor's determination (or 210 days after filing with the Secretary of Labor). The only requirement for filing a claim is that the employee must show, by a preponderance of the evidence, that the protected conduct

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[15] *Id.* at § 929P(b).

[16] *Id.* at § 929P(c).

[17] *Id.* at § 922(b)

[18] *Id.* at § 922(c)

[19] *Id.* at § 1002(15)(A).

[20] Pub. L. 111-203, § 1057(a)(1)-(4).

was a "contributing factor" to the retaliation.[21] Upon such a showing, the burden shifts to the employer to show, by clear and convincing evidence, that it would have taken the same action in the absence of the employee's protected activity.[22]

III. QUALIFYING FOR A REWARD AS A WHISTLEBLOWER

In general, Regulation 21F provides for a monetary award to any individual or group of individuals (a company or other entity is not eligible), regardless of citizenship, who:

(i) voluntarily provides the Commission;

(ii) with original information about a possible violation of the federal securities laws;

(iii) that leads to a successful enforcement action;

(iv) resulting in monetary sanctions exceeding $1,000,000.[23]

A. "Voluntarily Provide"

To qualify as a whistleblower, the first requirement is that the individual "voluntarily provide" the information to the SEC. Information is provided voluntarily if it is provided "before a request, inquiry, or demand" for such information by either (i) the SEC; (ii) by the Public Company Accounting Oversight Board or any self-regulatory organization in connection with an investigation, inspection or examination; or (iii) in connection with an investigation by Congress, the Federal Government, or a state Attorney General or securities regulatory authority.[24]

Moreover, the submission will not be considered voluntary if the whistleblower was required to provide the information to the SEC as a result of a pre-existing legal duty to the Commission, or a contractual duty owed to the Commission or one of the other enumerated authorities.[25]

It is important to clarify, however, that such a request, inquiry, or demand must be made on the individual, and not simply the organization for which he or she is employed. Thus, if an employee is aware that a demand for information was made to his or her employer or that the employer is being investigated, and that employee provides the SEC with information about a possible securities violation, the submission would still be deemed voluntary. But an issue could arise if the employee provides the same information to the Commission that the Commission received as part of its investigation of the company (or would have received even if the employee had not provided the information to her employer during the investigation). That could affect the determination of whether the employee's submission led to a successful enforcement action.

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[21] *Id.* at §1057(c)(3)(c).

[22] *Id.*

[23] 17 C.F.R. § 240.21F-3.

[24] *Id.* at § 240.21F-4(a)(1).

[25] *Id.* at § 240.21F-4(a)(3).

Another important caveat is that a submission to the SEC will be deemed voluntary even if made after receiving a request, inquiry, or demand from the SEC, if the information was voluntarily provided to one of the other authorities prior to the SEC's request or inquiry.

B. "Original Information"

The second requirement for receiving a reward is that the individual provide "original information." To be considered "original information," the information must be:

(i) derived from independent knowledge or independent analysis;

(ii) not already known to the SEC from any other source;

(iii) not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the media, unless the whistleblower was the original source for the information; and

(iv) provided to the SEC after July 21, 2010.[26]

Independent Knowledge and Independent Analysis. The Commission defines "independent knowledge" as factual information in the individual's possession that is not derived from publicly available sources.[27] Significantly, the information could be gained from experiences, communications, and observations in business or social interactions. In other words, the individual need not have first-hand knowledge of the potential violation, but could have learned of the facts from a third-party. "Independent analysis" is defined in the Regulation as an individual's own examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.[28]

There are a number of important circumstances in which the SEC will not consider information as being derived from independent knowledge or analysis. These exclusions generally apply to narrow categories of individuals, such as lawyers, consultants, and other third parties who acquire information as part of their work on behalf of a client, or company insiders who learn of the information in connection with their role in an internal investigation into wrongdoing, as well as information acquired illegally. Specifically, information is excluded in the following circumstances:

(i) when the information is subject to the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney pursuant to § 205.3(d)(2), the applicable state attorney conduct rules, or otherwise;

(ii) the information is obtained in connection with the legal representation of a client, and the lawyer seeks to make a whistleblower submission for his or her own benefit, unless disclosure

[26] *Id.* at § 240.21F-4(b).

[27] *Id.* at § 240.21F-4(b)(2).

[28] *Id.* at § 240.21F-4(b)(3).

of that information would otherwise be permitted by an attorney pursuant to § 205.3(d)(2), the applicable state attorney conduct rules, or otherwise;

(iii) the information was obtained because the individual was (a) an officer, director, trustee, or partner of an entity and was informed of the allegations by another person, or learned of the allegations in connection with the entities internal process for identifying and reporting violations of law; (b) an employee whose duties involve compliance or internal audits, or an employee of a firm retained to perform compliance or internal audit; (c) employed by a firm retained to conduct an internal investigation; or (d) an employee of a public accounting firm and the information was obtained during an engagement; or

(iv) the information is obtained by means determined by a United States court to violate federal or state criminal law.[29]

As for the third category of exclusions—for individuals who are insiders and third parties retained to perform legal, audit, or investigative work—there are a few important exceptions. Specifically, the exclusion will not apply if the individual has a reasonable basis to believe that the disclosure is necessary to prevent the entity from engaging in conduct that will cause substantial injury to the entity or the investing public, or that the relevant entity is engaging in conduct that will impede an investigation. Moreover, if more than 120 days elapsed since the whistleblower provided the information to the entity's audit committee, chief legal or compliance officer, or his or her supervisor, the exclusion will not apply.[30]

Original Source. As stated above, for information to be considered "original," it cannot already be known to the SEC from any other source. There are two exceptions to this rule. First, the SEC will consider a whistleblower the original source of information that was previously received by the SEC from another source if that source obtained the information from the whistleblower or the whistleblower's representative in the first place (and the information otherwise satisfies the definition of original). Second, the SEC will consider a whistleblower to be the original source of information if that information derives from the whistleblower's independent knowledge or analysis *and* materially adds to the information already known to the Commission.[31]

C. "Successful Enforcement Action"

Third, the voluntarily provided, original information must lead to a successful enforcement action. The Regulation sets forth three circumstances constituting a successful enforcement action:

(i) The information provided to the Commission caused the Commission to commence an examination, open an investigation, reopen a

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[29] 17 C.F.R. § 240.21F-4(b)(4)(i)-(iv).

[30] *Id.* at § 240.21F-4(b)(4)(v).

[31] *Id.* at § 240.21F-4(b)(5)-(6).

previously-closed investigation, or inquire about different conduct as part of a current investigation, and the Commission brings a successful action based in whole or in part on the original information provided;

(ii) The original information relates to a conduct that is already under investigation by the Commission (or other federal authority) and significantly contributes to the success of an enforcement action based on that conduct; or

(iii) The information is provided by an employee through his or her employer's internal reporting procedures before or at the same time the employee submits the information to the Commission, and the employer then provides the employee's information (or the results of an internal investigation) to the SEC, which leads to a successful enforcement action (the employee will get the full credit for providing the information to the SEC).[32]

This last category was not in the original rules proposed by the SEC, and many comments expressed the concern that whistleblowers would completely bypass organizations' internal reporting mechanisms.[33] Thus, this provision was added in an effort to encourage individuals to utilize internal compliance programs so that such programs will continue to play an important role in facilitating compliance with the securities laws.

In addition, the SEC will pay an award based on sanctions collected in a related proceeding brought by the Attorney General of the United States, a regulatory authority or self-regulatory organization, or a state attorney general, and that is based on the same information that led to the Commission's successful enforcement action.[34]

D. "Monetary Sanctions Exceeding $1,000,000"

Generally, the monetary sanctions must exceed $1 million in a single judicial or administrative action. In some circumstances, however, the SEC will aggregate the sanctions collected in two or more proceedings if the proceedings arise out of a common nucleus of operative facts.[35] Once this threshold is met, a whistleblower would be eligible for a monetary award based upon all monetary sanctions collected in related enforcement actions—regardless of amount.

IV. PROCEDURES FOR MAKING A SUBMISSION AND CLAIMING AN AWARD

The procedures for submitting original information to the Commission are relatively simple, yet it is extremely important that they be followed correctly. Otherwise, a potential

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[32] *Id.* at § 240.21F-4(c).

[33] Implementing Release at 101-07.

[34] 17 C.F.R. *Id.* § 240.21F-(2)(b).

[35] *Id.* at § 240.21F-4(d).

whistleblower might be disqualified from receiving a reward and, critically, might not be eligible for the anti-retaliation protections provided by Dodd-Frank.

Regulation 21F provides two methods for submitting information to the SEC: (1) online using the Commission's website (http://www.sec.gov), or (2) by mailing or faxing a Form TCR to the SEC Office of the Whistleblower.[36] In addition, the whistleblower must declare under penalty of perjury that the information contained in the submission is true and correct to best of his or her knowledge.[37] If the whistleblower wishes to remain anonymous, his or her submission must be made by an attorney in accordance with the same procedures just described.[38]

Once a final judgment in an action is entered and the damages exceed the $1 million threshold, the SEC will publish a Notice of Covered Action. In order to claim a reward, the whistleblower must then complete, sign, and submit to the SEC a Form WB-APP[39] within ninety (90) days of the date of the Notice of Covered Action. If the whistleblower provided his or her original submission anonymously, the whistleblower must disclose his or her identity on the Form WB-APP.[40]

V. DETERMINING THE AMOUNT OF THE AWARD

If all the conditions are met and a whistleblower is entitled to an award, the amount of that award will be between 10 and 30 percent of the sanctions collected by the SEC or other prosecuting authority.[41] Even if there are multiple whistleblowers, the total amount awarded to all whistleblowers will still be between 10 and 30 percent of the sanctions, with the amount of the award for each whistleblower determined on an individual basis. The determination of the actual amount of a reward is in the sole discretion of the SEC.

In reaching its determination, SEC considers several factors unique to the circumstances of each case.

The factors that may increase a whistleblower's award include:

(i) the significance of the information provided to the success of the action or related action, including how the information related to the action and the degree to which the information supported one or more successful claims;

(ii) the degree of assistance provided by the whistleblower to the Commission in the action or related action, including, among other things, the extent to which the whistleblower explained complex transactions and interpreted key evidence, and assisted the

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[36] *Id.* at § 240.21F-9(a).

[37] *Id.* at § 240.21F-9(b).

[38] *Id.* at § 240.21F-4(c).

[39] Application for Award for Original Information Provided Pursuant to Section 21F of the Securities and Exchange Act of 1934.

[40] 17 C.F.R. § 240.21F-10.

[41] 17 C.F.R. § 240.21F-5(b).

authorities in the recovery of the fruits and instrumentalities of the violation;

(iii) law enforcement interest in prosecuting and deterring the type of securities violation involved in the submission; and

(iv) whether the whistleblower reported the potential violation internally using organizational compliance procedures (another attempt by the SEC to preserve the importance of internal compliance programs).[42]

Conversely, the factors that could reduce the size of a whistleblower's award are:

(i) the culpability or involvement of the whistleblower in the securities violation, including the whistleblower's role in and the extent he or she benefited from the violation;

(ii) whether the whistleblower unreasonably delayed reporting the potential violation; and

(iii) if the whistleblower internally reported the potential violation in accordance with his or her employer's compliance program, whether, and the extent which, the whistleblower interfered with or undermined that program.[43]

As the above indicates, an individual will not automatically be precluded from receiving an award as a whistleblower if he or she had some culpability in the underlying violation. The extent of the culpability would merely be a factor considered by the SEC in determining the size of the award.

VI. ELIGIBLE SECURITIES VIOLATIONS

With the prospect of large financial awards and robust employee protections provided by Dodd-Frank and the new SEC whistleblower program, it is important that individuals are aware of those violations that qualify for the program. A whistleblower may report any violation of the federal securities laws that has occurred, is ongoing, or is about to occur. However, for the SEC to obtain a monetary civil penalty, the relevant securities violation(s) must have occurred, or have remained ongoing, within the past five (5) years, even if the whistleblower did not discover the possible violation until a later date.[44] The reported misconduct may occur anywhere in the world. International organizations and individuals that do business or have contacts with the United States may also be subject to this jurisdiction.

The following is a brief summary of the most common types of securities violations—and, according to the SEC's Annual Report on the Dodd-Frank Whistleblower Program for

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[42] *Id.* at § 240.21F-6(a).

[43] *Id.* at § 240.21F-6(b).

[44] *See* 28 U.S.C. 2462; *Gabelli v. SEC,* 133 S.Ct. 1216 (2013).

fiscal year 2012, released in November 2012,[45] the most commonly reported violations by whistleblowers.

A. Financial Fraud/Corporate Disclosures

Financial fraud involves the filing of false or misleading financial statements with the SEC, and often occurs when a company engages in accounting practices that create the appearance of increased earnings and revenues for a particular reporting period. Another common financial fraud is the use of manipulative business transactions that generally have no practical purpose but to manipulate revenues, expenses, earnings, and/or losses for a reporting period. Sometimes these transactions might even be legal on their face, but they are being used unlawfully. Financial fraud could also occur when a company fails to speak truthfully when discussing its financial results.

B. Offering Fraud

Offering fraud occurs when an individual (or group of individuals) make misrepresentations and/or omissions of material fact to potential investors in a new company. For example, individuals might contact potential investors and attempt to induce them into investing in a new, unknown company, by making false claims about the company. It is also often the case that the securities being sold are not properly registered with the SEC, an additional violation of the securities laws called an "Unregistered Offering." Another common type of offering fraud is a Ponzi scheme, where investors are paid returns from their own money or from the money invested by subsequent investors, rather than from any actual profit earned. New investors are induced with unusually consistent or abnormally high returns being paid to older investors.

C. Insider Trading

Insider Trading is the buying or selling of a corporate security while in possession of material information that is not known to the public at the time, but then becomes public and causes the price of the security to rise or fall significantly. This information is often obtained by corporate insiders who have access to the information based on their position inside the organization. That insider then buys or sells the securities based on that information. Insider trading may also occur when a corporate insider "tips" the nonpublic information to someone outside of the organization, and that person then buys or sells securities. In that case both the "tipper" of the information and the "tipee" (the person receiving the information) are liable for illegal insider trading.

D. Trading and Pricing

Trading and pricing violations are any number of unlawful trading techniques that involve unfair trades or affect the price of the security being bought or sold. These include:

- Market timing/late trading: Market timing is a trading "arbitrage" strategy that seeks to take advantage of pricing inefficiencies in mutual funds and similar vehicles, which are generally priced only once per day. For example, a market timer may learn that changes in

[45] Available at: http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf.

the price of securities traded on a foreign exchange have not yet been incorporated into the price of a mutual fund's shares, and buy or sell the shares on that basis. While market timing is not illegal per se, it may cause harm to long-term investors and may constitute a securities violation if not properly disclosed to investors. Late trading occurs when a mutual fund permits certain customers to purchase shares in the fund after trading has closed for the day. Because mutual fund prices are set once a day, a customer that purchases after trading is closed can do so at that day's price and not at the following day's price.

- Marking the Close: Buying or selling a stock near the close of the day's trading in order to affect the closing price.

- Front running: The act of buying or selling a security with the knowledge that another investor is about to make a trade that will influence the price of the security one way or the other.

- Pooling: An agreement among a group of people delegating authority to a single manager to trade in a specific stock, for a specific period of time, and then to share in the resulting profits or losses.

E. Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act ("FCPA") is an anti-bribery statute that prohibits the offering, payment, or promise to pay money or anything of value to any foreign official in an effort to win or retain business from that foreign official's government. It is not a violation of the FCPA, however, if (i) the payments are legal under the written laws of the country in which the payments are made; or (ii) the payment is a reasonable expenditure directly related to the conducting of business with a foreign government.

F. Market Manipulation

Market manipulation is the interference with the free and fair operation of the market by engaging in transactions that create an artificial price or maintain an artificial price for a security. Examples of market manipulation include:

- Churning: Churning is the placing of both buy and sell orders for the same security at the same price in order to create the appearance of increased activity in the buying and selling of the security, thereby increasing its price.

- Pump and Dump: Where owners of a security spread false information so that the price of the security will increase (the pump). When the price of the security does increase based on these false rumors, the owners who spread the false information sell off their shares, making a profit (the dump).

- Wash Trades: Like churning, wash trades involve the selling and repurchase of the same security for the purpose of generating activity and increasing the price.

G. Market Events

"Market events" refer to disruptions or aberrations in the securities markets, such as an unexpected interruption in trading on a securities exchange, a liquidity crisis or a "flash crash". While not all such market events represent securities violations, the SEC has brought enforcement actions against exchanges and related entities where the market event was caused or exacerbated by the exchange's failure to follow relevant SEC or internal rules.

H. Municipal Securities

Municipal securities are debt securities issued by state and local governments in the United States and its territories, and are generally used to fund items such as infrastructure, schools, libraries, general municipal expenditures. Under the Exchange Act, dealers in municipal securities are required to provide certain important information about the municipal securities to investors. In addition, as with any security, the anti-fraud provisions prohibit any person from making a false or misleading statement of material fact, or omitting to state any material fact, in connection with the offer, purchase, or sale of any municipal security. Thus, a failure to comply with these laws in connection with the purchase or sale of municipal securities would be an actionable securities violation subject to SEC enforcement.

VII. CONCLUSION

The passage of Dodd-Frank and the enactment of the SEC whistleblower program were watershed moments in financial regulation and investor protection. Although the whistleblower program is still in its infancy, its impact is already being felt: in fiscal year 2012 alone, the Office of the Whistleblower received more than 3,000 tips, coming from individuals in all 50 states as well as 49 foreign countries. The SEC has now paid several whistleblower awards, a significant fact given that SEC enforcement actions typically take two to four years to complete. As Associate Director of the Division of Enforcement Stephen Cohen commented in June 2013, the SEC is "receiving information from individuals much closer in time to the misconduct, in some instances during the misconduct, and these individuals are often insiders, which is very unusual, are in a position to point [the SEC] precisely to where the useful information is and save [the SEC[extraordinary resources… I expect you will see a lot more impact from the program publicly in the coming months and years."[46]

Going forward, it is likely that many of the SEC's most significant enforcement actions will be the result of whistleblower tips, changing the landscape of securities enforcement. Accordingly, it is vital that potential whistleblowers and their counsel familiarize themselves with the relevant statutory provisions and the rules adopted by the SEC so that whistleblowers can maximize their award and protect themselves from retaliation. It will also be important for responsible organizations to evaluate their internal reporting systems and to establish a culture of integrity.

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[46] See SEC's Cohen Predicts Major Whistleblower Awards Soon, Corporate Crime Reporter, Jun. 12, 2013, available at: http://www.corporatecrimereporter.com/news/200/seccohenwhistleblower06122013/.