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## White Collar Defense and Investigations, Securities Litigation and Enforcement and Labor & Employment Client Service Groups

To: Our Clients and Friends

June 19, 2014

### SEC Settles First Whistleblower Anti-Retaliation Case

The Securities and Exchange Commission (“SEC”) recently trumpeted its commitment to whistleblower protection with the settlement of its first ever whistleblower anti-retaliation case. On June 16, the SEC announced a \$2.2 million sanction against Paradigm Capital Management Inc., an Albany-based hedge fund advisory firm charged with engaging in prohibited principal transactions and then retaliating against the employee who reported the activity to the SEC. Even though the settlement penalties might have been the same for an action brought solely on the substantive violation, the SEC chose to emphasize its commitment to protect whistleblowers.

According to the SEC’s order, Paradigm owner Candace King Weir caused Paradigm to conduct trades with an affiliated broker-dealer (also owned by Weir) on behalf of a hedge-fund client without providing the necessary disclosure or obtaining the client’s consent. Paradigm’s then-head trader reported the trading activity to the SEC. Immediately upon learning of his report, Paradigm removed the whistleblower from his position as head trader, stripped him of his supervisory responsibilities, and reassigned him to work as a full-time compliance assistant. The SEC concluded that Paradigm engaged in prohibited trades and retaliation and ordered the company to pay disgorgement of \$1.7 million, prejudgment interest of \$181,771 and a penalty of \$300,000. It is unclear from the SEC’s order what portion of the \$300,000 penalty is attributable to whistleblower retaliation as opposed to the trading violations. The respondents neither admitted nor denied the allegations.

The SEC has authority to bring enforcement actions based on whistleblower retaliation under a 2011 rule implementing Section 922 of the Dodd-Frank Act, which created a Securities Whistleblower Incentives and Protection Program. The Whistleblower Program has become increasingly active in recent years - receiving over 3,000 tips and issuing awards up to and exceeding \$14 million in 2013 alone. According to Sean McKessy, chief of the SEC Office of the Whistleblower, anti-retaliation protections are necessary to encourage whistleblowers to come forward, and the SEC “will continue to exercise [its] anti-retaliation authority in . . . situations where a whistleblower is wrongfully targeted for doing the right thing and reporting a possible securities violation.”

The SEC also has indicated that this enforcement action should serve as a warning to other firms against engaging in similar whistleblower retaliation. As Andrew J. Ceresney, director of the SEC Enforcement Division explained, “[t]hose who might consider punishing whistleblowers should realize that such retaliation, in any form, is unacceptable.” Therefore, companies should ensure they have policies in place prohibiting whistleblower retaliation, and should provide a complaint procedure for any employee who believes he or she has suffered from retaliation.

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