

DODD-FRANK WHISTLEBLOWER PROGRAM

OVERVIEW

Within the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress created a Whistleblower Program that provides monetary incentives for individuals to come forward and report potential violations of the federal securities laws to the Securities and Exchange Commission (“SEC”)¹. Under the program, eligible whistleblowers may be entitled to receive an award of between 10% and 30% of the sanctions collected in actions brought by the SEC and related actions brought by other authorities.

To be eligible for an award under this program, a whistleblower must voluntarily provide the SEC with original information about a possible violation of the securities laws that leads to a successful enforcement action resulting in sanctions exceeding \$1 million. Information is considered “voluntarily provided” if it is submitted before it is requested by the SEC, Congress, or another regulatory or enforcement agency or self-regulatory organization in connection with an investigation or certain examinations or inspections. Original information “leads to” a successful enforcement action if it causes the SEC to open an investigation that proves successful, or substantially contributes to the success of an investigation that is already underway. Information is “original” if it is derived from the whistleblower’s independent knowledge or analysis. Therefore, the SEC generally will not consider information “original” if it was obtained in connection with legal representation or obtained by an employee “whose principal duties involve compliance or internal audit responsibilities.”

The Whistleblower Program does not require potential whistleblowers to report information internally before submitting it to the SEC, but there are potential benefits for whistleblowers who make use of internal compliance and reporting structures. If a whistleblower reports information to the SEC within 120 days of reporting it internally, the SEC will use the date it was reported internally for purposes of determining whether the information is “original.” Further, if a company conducts an internal investigation in response to a whistleblower’s internal report, the whistleblower will benefit from the information produced in the Company’s investigation when the SEC decides whether the whistleblower should receive an award, and if so for how much. The rules explicitly provide that participation in internal compliance and reporting programs may increase the amount of the whistleblower’s award, whereas interference with such programs may decrease the award.

The SEC’s Whistleblower Office works with the Enforcement Division to protect the identities of whistleblowers who wish to remain anonymous, and to prevent retaliation by employers. The

protections and monetary incentives afforded by the Whistleblower Program mean it likely will continue to bring more cases to the SEC’s attention, and will lead to increased enforcement against companies and individuals. Therefore, companies should ensure that they have vigorous compliance programs in place to prevent and detect potential securities violations, and to mitigate penalties that may result from inadvertent violations. Bryan Cave’s attorneys are experienced in creating and analyzing compliance programs and are knowledgeable in a variety of proactive steps that companies can take to avoid becoming subject to a whistleblower complaint.

¹The Act also created a similar program to encourage individuals to report potential violations of the Commodity Exchange Act to the Commodity Futures Trading Commission (“CFTC”). Eligible whistleblowers under the CFTC Whistleblower Program are subject to the same requirements as those established under the SEC Whistleblower Program.

MEET THE TEAM



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