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Whistle-Blower Protection Available under Dodd-Frank Reform

Leslie B. Fletcher
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Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) added new Section 21F to the Securities Exchange Act of 1934 (the Act). This section, “Submissions Whistleblower Incentives and Protection,” enables the U.S. Securities and Exchange Commission (the Commission) to pay up to $3 million to eligible whistle-blowers. Dodd-Frank also provides protection from retaliation by employers to those individuals who submit securities information to the Commission.

To be eligible for a monetary award, whistle-blowers must (a) voluntarily provide the Commission (b) original information about a violation of federal securities laws (c) in writing (d) that leads to the successful enforcement of a covered judicial or administrative action, or a related action, resulting in monetary sanctions exceeding $1 million. Whistle-blowers who choose to remain anonymous are required to submit their information to the Commission through an attorney.


The final rules reflect the Commissioners’ consideration of public comments received on their initial proposal. They also include the Commissioners’ evaluation of their final decision. Two of the more contentious issues that arose during the rulemaking process, the definition of a whistle-blower and the interplay between Section 21F and corporate internal control procedures, are summarized below.

**Issue 1:** What is a whistle-blower? Final Rule 21F-2(a) clarifies parts of the definition contained in the proposed rule and retains its applicability solely to natural persons. Legal entities are, therefore, ineligible to receive an award. The final rule defines a whistle-blower as an individual who, alone or jointly with others, provides information to the Commission in accordance with the procedures set forth in Rule 21F-9(a) relating to a possible violation of the federal securities laws, or a rule or regulation promulgated by the Commission, that has occurred, is ongoing or is about to occur. The final rule expands the number of possible violations included and the time frame over which the violations could occur. It also strictly delineates reporting procedures to ensure that only voluntary whistle-blowers meet the eligibility requirements for a monetary award.

**Issue 2:** What is the interaction between the section 21F whistle-blower requirements and the existing whistle-blower requirements of a company’s internal controls and compliance procedures? The Commissioners decided to not require whistle-blowers to report violations internally through their companies’ compliance system to be eligible for an award.

The Commissioners did include incentives to encourage employees to first report internally. Whistle-blowers who report through their employers’ compliance system before reporting to the Commission may receive a smaller award or a larger monetary award. Conversely, those who interfere with their company’s compliance systems may receive a reduced award.

A second incentive credits whistle-blowers with both their own original information and any additional information submitted by other whistle-blowers employed by their companies.

Numerous other issues were resolved in the final rules. To view them and the complete text of the regulations, go to sec.gov/compliance/incentives/index.shtml.

Whistle-blowers who choose to remain anonymous are required to submit their information to the Commission through an attorney. For identifying and assisting start-up companies was conducted in Savannah by The Creative Coast, Georgia Tech and Georgia Southern University. More than 120 entrepreneurs responded with their new venture ideas. Forty-two of the most promising were presented to the business community and investors for possible funding. A FastPitch program is important, for start-ups create up to 30 percent of the new jobs. A soon-to-be announced Savannah company is taking a page out of Tom Friedman’s latest book “Hot, Flat and Crowded.” Friedman says that sustainability is seriously acted upon in the U.S., this will cause an economic transformation greater than the first Industrial Revolution.

Developing products and services for the green economy is “poised to be the mother of all markets,” according to Friedman. This Savannah Internet-based firm will focus on “products of the future” — green products, sustainability products, technologically-embedded products, smart products and new ideas for clean energy, energy efficiency and conservation of energy. If you have product ideas in this area, please send them to me for consideration."