



## CLIENT ALERT

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### SEC Settles Sarbanes-Oxley Enforcement Action with CEO Despite No Allegation Of Fraudulent Misconduct

June 9, 2010

For the second time in less than a year, the Securities and Exchange Commission has filed an enforcement action against a former chief executive officer of a public company seeking to recover incentive compensation under the “clawback” provision of the Sarbanes-Oxley Act of 2002 (“SOX”) – despite the fact that the SEC did not allege that the executive engaged in any fraudulent conduct. In the most recent action, the SEC last week announced a settlement with Walden O’Dell, the former chief executive officer of Diebold, Inc., under the SOX clawback provision, Section 304. The O’Dell action once again highlights the SEC’s willingness to proceed against CEOs and CFOs under SOX Section 304 even in the absence of fraudulent wrongdoing by such executives and serves as further evidence of the SEC’s renewed aggressiveness in the enforcement arena. As a result, companies – and CEOs and CFOs in particular – should continue to ensure that sufficient internal controls are in place to monitor conduct related to financial statement preparation and to minimize the likelihood of accounting restatements due to misconduct. In addition, companies that have not already done so should consider implementing clawback provisions, either as stand-alone policies or embedded in compensation plans and agreements.

Click [here](#) to read our client alert discussing the recent SEC action.

#### Contact Information

If you have any questions regarding these issues, please contact either the Womble Carlyle attorney with whom you usually work or one of our Corporate and Securities attorneys at the following link:

<http://www.wcsr.com/corporateandsecurities>.

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