

ALERTS AND UPDATES

Impacts of the US Financial Reform Act on International Business

September 14, 2010

New US legislation, the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#), will bring sweeping changes to international compliance obligations. It requires new and existing regulatory agencies to undertake more than 50 studies of the financial system and more than 250 instances of rulemaking.

The Dodd-Frank Act will impact a wide range of compliance issues, including data protection, privilege and notions of when a lawyer working in-house would be recognized as a "lawyer" and not as a businessperson. In Europe, Dodd-Frank has echoes in the 14 September decision by the European Court of Justice in the *Akzo Nobel* case, holding that attorney-client privilege does not apply to advice from in-house lawyers.

The Dodd-Frank Act greatly expands the extraterritorial reach of the United States. In addition, the prospect of incentives for whistleblowers is likely to mean more investigations and add to the tensions already felt between the US and Europe over differing attitudes to whistleblowing. Dodd-Frank sets the stage for agencies like the US Securities and Exchange Commission (SEC) to pay private "bounty hunters" up to 30 percent of recovered monies (excluding fines) based upon information provided by whistleblowers. Whistleblowers are also protected from retaliation. The SEC has the discretion to determine the amount of an award, based on the significance of the information provided, the degree of assistance provided by the whistleblower, the "programmatic interest of the Commission in deterring violations" and other factors that the SEC establishes. In addition, the option of reporting concerns to the SEC for a bounty of millions of dollars is likely to undermine in-company reporting. Whistleblowing is not just limited to employees, with the prospect of consultants, suppliers and business rivals also receiving bounty payments.

Internal investigations touching on Europe and the United States are already challenging. Dodd-Frank, like the Sarbanes-Oxley legislation eight years ago, is likely to change the way cross-border business is done.

In the current regulatory landscape, companies may want to consider updating their compliance policies, conducting internal audits to identify possible areas of vulnerability and addressing any weaknesses before they are reported to the authorities. At the same time, the *Akzo Nobel* case in Europe also cautions of the risks in relying on in-house counsel privilege to do some of that work. Companies may also want to review their existing whistleblowing policies, reporting hotlines and internal procedures to try to encourage complaints internally rather than through the external bounty scheme.

About Duane Morris

Duane Morris has an online **Financial Services Reform Center**—www.duanemorris.com/FinancialReform—which includes videos and the firm's comprehensive series of *Alerts* analyzing the provisions of the Act and emerging policies, as well as links to relevant government websites. Duane Morris' attorneys will be monitoring the rules and regulations released under the Act, as well as the regulatory agencies' interpretive guidance. For [additional Alerts](#) on these and other topics, please revisit www.duanemorris.com/FinancialReform.

For Further Information

If you have any questions about any of the topics described in this *Alert*, including how they may affect your company or its executives, please contact [Jonathan P. Armstrong](#), [Marvin G. Pickholz](#), any [member](#) of the [Corporate Practice Group](#), any [member](#) of the [White-Collar Criminal Law Practice Group](#) or the attorney in the firm with whom you are most regularly in contact.