

Corporate & Financial Weekly Digest

Posted at 10:17 AM on May 27, 2011 by [Robert J. Wild](#)

SEC Issues Final Rules for Whistleblower Program under Dodd-Frank Act

Co-authored by [Kari E. Hoelting](#)

On May 25, the Securities and Exchange Commission issued final rules creating a whistleblower program under Section 21F of the Securities Exchange Act of 1934 as required by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new program authorizes the SEC to pay rewards to individuals who voluntarily provide the SEC with original information that leads to successful SEC enforcement actions that result in monetary sanctions totaling more than \$1 million. The total amount of the award is between 10% and 30% of the monetary sanctions.

An individual is deemed to have voluntarily provided original information to the SEC if such individual has provided the information before the government, a self-regulatory organization or the Public Company Accounting Oversight Board requests it from the whistleblower. Information will be considered "original" if it is based upon the whistleblower's "independent knowledge" or "independent analysis," is not already known to the SEC from any other source, and is not derived exclusively from certain public sources. A whistleblower's voluntary provision of original information will be deemed to have led to a successful enforcement action if:

- the information was sufficiently specific, credible and timely to cause the SEC to open or reopen an examination or investigation and the SEC brought a successful action based in whole or in part on conduct that was the subject of the whistleblower's original information;
- the information significantly contributed to the success of an ongoing investigation; or
- the whistleblower's information is reported under the whistleblower employer's whistleblower, legal or compliance procedures for reporting allegations of possible violations of law before or at the same time reported to the SEC, and the employer then passes such information on to the SEC and either of the criteria above are met. In any event, the whistleblower must report this information to the SEC within 120 days of reporting to the employer.

Finally, in order to meet the monetary sanctions totaling in excess of \$1 million, the rules permit the aggregation of multiple SEC cases that arise out of a common nucleus of operative facts as a single action.

The final rules prohibit the following individuals from receiving awards (subject to certain exceptions):

- people who have a pre-existing legal or contractual obligation to report the information to the SEC;
- public accountants working on SEC engagements and attorneys who attempt to use information from client engagements;
- people who attempt to use information obtained in a manner that violates federal or state criminal laws;
- foreign government officials;
- officers, directors, trustees or partners of an entity who learn such information from another person such as an employee or who learn such information in connection with conducting the entity's internal compliance review; and
- individuals whose actions led to all or part of the sanctions.

The final rules also protect potential whistleblowers by prohibiting retaliation against the whistleblower or interference with a whistleblower's efforts to communicate with the SEC. The final rules will be discussed further in an upcoming *Client Advisory*.

Click [here](#) to read the Opening Statement of the SEC Chairman on these rules.

Click [here](#) to read the press release from the SEC.

Click [here](#) to read the final rules.

Katten Muchin Rosenman LLP

Charlotte Chicago Irving London Los Angeles New York Washington, DC