

SEC'S WHISTLEBLOWER RULES ARE NOW EFFECTIVE

By Albert S. Dandridge, III

Background

On May 25, 2011, the Securities and Exchange Commission ("SEC") adopted final rules implementing the whistleblower provisions of the Dodd-Frank financial reform regulations, which provide that individuals who report potential securities violations to the SEC may be entitled to a reward of between 10 and 30 percent of any monetary recovery exceeding \$1 million. This program affects every public company.

Effective August 12, 2011

The new whistleblower program became effective on August 12, 2011.

As of that date, the SEC's whistleblower website* provides a link with regard to submitting information to the SEC, to submitting a claim for an award under the program and procedures and considerations in connection with assessing award claims.

The program presents challenges to public companies that have spent considerable effort and resources on strengthening their internal compliance and reporting systems in response to the Sarbanes-Oxley Act. In addition, with the SEC imposing ever-larger civil penalties in enforcement actions, especially in anti-bribery Foreign Corrupt Practices Act enforcement actions and because of the massive scale of settlements that the SEC has been achieving in this area, the whistleblower provisions provide powerful incentives to employees to bypass or completely ignore internal compliance procedures.

Even in instances where a whistleblower first reports a potential violation internally, that individual may still be eligible for an award if the whistleblower submits

the same information to the SEC within 120 days of providing the information to the company. Therefore, companies have an incentive to investigate reports of potential violations quickly while also ensuring compliance with the rule's anti-retaliation protections.

Proactive Measures Companies Should Consider

A company should (1) have an effective internal reporting and compliance program that employees have confidence in, (2) establish the right tone at the top of the organization, by encouraging internal reporting and resolution of potential violations, and (3) educate employees about the internal reporting mechanisms and how they interact with the SEC's whistleblower program. In addition, supervisors and managers in the organization should be well-versed in the anti-retaliation provisions of the whistleblower rules, so that no inappropriate employment actions or threats are carried out when an employee either comes forward internally or goes directly to the SEC. ♦

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.

For more information about our Securities Practice Group, or to request to speak with a member of the group at a particular Schnader office location, please contact:

*Albert S. Dandridge, III, Chair
215-751-2178
adandridge@schnader.com*

www.schnader.com

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* <http://www.sec.gov/whistleblower>