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# Dodd-Frank Act Tempts Securities Law Whistleblowers with Lucrative Cash Bounties, Highlighting the Need for Effective Compliance Procedures


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## EXECUTIVE SUMMARY

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), a sweeping overhaul of the U.S. financial sector, recently passed both houses of Congress and was signed into law by President Obama on Wednesday, July 21, 2010.[1] Dodd-Frank enhances the SEC's regulatory and enforcement authority in many ways. One important provision, which may have an immediate impact on the SEC's enforcement activity, provides the SEC with vast new authority to pay bounties to whistleblowers who provide information regarding violations of the securities laws.

Dodd-Frank provides that the SEC **must** award whistleblower bounties where "original information" provided by an eligible whistleblower results in enforcement actions (including settled actions) that yield monetary remedies of over $1 million.[2] Such whistleblowers will be entitled to recover between 10% and 30% of the total monetary sanctions assessed by the SEC, the DOJ and certain other regulatory and law enforcement authorities in related actions. Although the SEC has discretion to set the amount of a bounty within the statutorily prescribed range, it is permitted to deny bounties only in limited circumstances, and whistleblowers who feel that they are wrongly denied a bounty have an opportunity to appeal the agency's decision. The SEC has nine months to promulgate rules implementing the new whistleblower bounty program, but the whistleblower provisions of Dodd-Frank have an immediate effect since whistleblowers may receive credit for original information provided to the SEC prior to the effectiveness of those rules,[3] even if the underlying violation occurred prior to the enactment of Dodd-Frank.[4]

Dodd-Frank also creates statutory protections for whistleblowers. First, it prohibits the SEC from disclosing information that could reasonably be expected to reveal their identities, unless and until such information is required to be disclosed in a proceeding instituted by the government. Moreover, it creates a private remedy for whistleblowers who allege retaliation, offering reinstatement and recovery of two-times back pay plus litigation expenses.

As we describe in more detail below, we expect the whistleblower bounty provisions to yield an increase in tips and associated SEC investigative activity. This program dovetails with a recent initiative to foster cooperation by individuals with SEC investigations and related enforcement actions by holding out the prospect of diminished or no charges or sanctions in exchange for information regarding violations of the securities laws.[5] Together, the whistleblower bounty program and the cooperation initiative create powerful incentives for insiders to report securities law violations to the SEC. Indeed, given

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1 *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010) (hereinafter cited as Dodd-Frank); Alister Bull and Stacey Joyce, *UPDATE 1-Obama to Sign Wall Street Reform Bill on Wednesday*, Reuters, July 16, 2010.

2 Dodd-Frank § 922(a).

3 Dodd-Frank § 924(b).

4 Dodd-Frank § 924(c).

5 *See* Policy Statement Concerning Cooperation by Individuals in its Investigations and Related Enforcement Actions, 17 C.F.R. § 202.12 (2010).

the exponential growth in government monetary sanctions in securities cases,[6] particularly in the Foreign Corrupt Practices Act (FCPA) arena,[7] bounties may offer a particularly rich payday. Some indication of what is in store may be found in the experience with a similar Internal Revenue Service (IRS) whistleblower bounty program, upon which the new SEC whistleblower bounty program is modeled,[8] and which has resulted in a pronounced and sustained uptick in whistleblower claims. As described below, however, that program has also been beset with thorny procedural issues.

All of this underscores the critical importance for firms to maintain robust compliance programs, and to operate those programs diligently and in a fashion that will enable firms to identify, investigate and address potential misconduct promptly and effectively. In this memorandum we analyze the statutory structure and likely operation of the new program. We also suggest that, in light of the likely increase in whistleblower reports to the SEC, this is a propitious time for companies to review their internal compliance programs to assure that they are appropriately tailored to the circumstance of the company's business, and that they operate effectively. Although the appropriate measures vary depending on the circumstances of each company, we suggest in the final section of this memorandum several issues for consideration, which fall broadly into three categories:

- Reviewing the adequacy and effectiveness of procedures to identify and escalate indications of potential accounting, disclosure, securities law or FCPA issues;
- Assessing personnel policies and procedures with a view to maintaining protection against retaliation claims; and
- Advance planning of response protocols in the event a compliance issue is discovered.

## New Statutory Framework for Whistleblower Awards

The new whistleblower bounty program supplants a far more limited whistleblower bounty program at the SEC. The Insider Trading and Securities Fraud Enforcement Act of 1988 provided the SEC with authority to award bounties of up to 10% of penalties imposed in insider trading cases.[9] Although this limited bounty program has existed for over 20 years, the SEC's Office of the Inspector General (OIG) recently found that the SEC has paid only $159,537 to a total of five claimants.[10] For a variety of reasons, the OIG concluded that the SEC's insider trading bounty program "is not fundamentally well-designed to be successful."[11]

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6 *See, e.g., SEC v. State Street Bank & Trust Co.*, Litigation Release No. 21408 (Feb. 4, 2010) (announcing a settlement of over $300 million, including civil monetary penalties of $50 million, disgorgement of $7,331,020, and $1,019,161 in prejudgment interest, as well as a $255,240,472 payment to compensate harmed investors); *SEC v. Bank of Am. Corp.*, Litigation Release No. 21407 (Feb. 4, 2010) (announcing a $150 million civil monetary penalty).

7 *See, e.g., SEC v. Halliburton Co. and KBR, Inc.*, Litigation Release No. 20897A (Feb. 11, 2009) (announcing a $177 million disgorgement payment by Halliburton and KBR to settle SEC charges and a $402 million fine against KBR to settle parallel criminal charges by the DOJ).

8 *See* S. Rep. No. 111-176, at 111-12 (2010).

9 Insider Trading and Securities Fraud Enforcement Act of 1988, Pub L. No. 100-704, §3, 102 Stat. 4677 (1988) (codified at Section 21A(e) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-1(e)).

10 H. David Kotz, Inspector General, U.S. Sec. & Exch. Comm'n, Assessment of the SEC's Bounty Program 5 (Mar. 29 2010), *available at* http://www.sec-oig.gov/Reports/AuditsInspections/2010/474.pdf. Two days after the enactment of Dodd Frank, on July 23, 2010, the SEC announced the largest whistleblower bounty ever awarded in an insider trading case to an individual who provided information that led to a settled civil injunctive action and a $10 million civil penalty against Pequot Capital Management, Inc., and Arthur Samberg, Pequot's chief executive. *SEC v. Pequot Capital Management, Inc.*, Litigation Release No. 21601 (July 23, 2010). The SEC exercised its authority under Section 21A(e) of the Exchange Act to award the individual $1 million, more than 5 times the aggregate awarded in all cases prior to the enactment of Dodd-Frank. *Id.*

11 *Id.* at iii.

Dodd-Frank greatly expands the SEC's authority to award whistleblower bounties. Under Dodd-Frank, the SEC's authority to award whistleblower bounties will extend to all judicial and administrative enforcement actions by the SEC that result in recoveries of over $1 million, and not merely limited to insider trading actions.[12] Whistleblowers who provide "original information"[13] will be entitled to recover between 10% and 30% of "monetary sanctions"[14] assessed by the SEC, or by the DOJ or certain other regulatory and law enforcement authorities in "related actions."[15]

If a whistleblower provides original information that leads to a successful enforcement action, the SEC "*shall*" award a bounty.[16] Even involvement in wrongdoing that is the subject of an enforcement action is not a bar to recovery. The SEC may deny an award only if an informant:

- is convicted of a criminal violation related to the underlying wrongful conduct;
- fails to submit information in a form required by the SEC;
- obtains information through the performance of a required financial audit, and the submission of information would be contrary to the auditor reporting requirements of Section 10A of the Securities Exchange Act of 1934;
- is a member, officer or employee of an "appropriate regulatory agency" overseeing a regulated entity, the DOJ, a self-regulatory organization or the Public Company Accounting Oversight Board; or
- knowingly and willfully provides false information.[17]

Although a qualifying whistleblower is entitled to a bounty of 10% of the government's monetary sanctions, the SEC has discretion to award up to three times that amount, or 30% of the monetary sanctions, based on its assessment of:

- the significance of the information provided by a whistleblower;
- the degree of assistance provided by a whistleblower;
- the programmatic interest of the SEC in deterring securities law violations by paying whistleblowers; and
- additional factors that the SEC may establish by rule or regulation.[18]

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12 Dodd-Frank § 922(a).

13 "Original information" includes information that is derived from the whistleblower's independent knowledge or analysis, is not already known to the SEC, and is not exclusively derived from allegations contained in another source such as a judicial or administrative hearing, a governmental investigation or the news media. *Id.*

14 "Monetary sanctions" include "any monies, including penalties, disgorgement, and interest, order to be paid," as well as monies deposited into disgorgement funds established pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley). *Id.*

15 *Id.* "Related actions" are judicial or administrative actions brought by the DOJ, a self-regulatory organization (SRO), a state attorney general or another "appropriate regulatory authority" that are based on original information provided by a whistleblower that leads to the successful enforcement of an SEC action. *Id.*

16 *Id.* (emphasis added).

17 *d.*

18 *Id.*

Whistleblowers may be represented by counsel, and bounty determinations are subject to abuse-of-discretion review in an appropriate federal court of appeals.[19] The amount of an award – as long as it is between 10% and 30% of monetary sanctions assessed by the SEC or other agencies in related actions – is not appealable.[20]

### Job Security for Whistleblowers

Whistleblowers also receive statutory protections under Dodd-Frank that permit them to retain their anonymity or, if identified, protect them from retaliation. The SEC is prohibited from disclosing information that could reasonably be expected to reveal the identity of the whistleblower, unless and until the information is required to be disclosed to a defendant or a respondent in a proceeding instituted by the government.[21] Additionally, employers are prohibited from retaliating against whistleblowers.[22] An individual who alleges that he or she was discharged or discriminated against for blowing the whistle has a private cause of action for reinstatement, two-times back pay and litigation expenses.[23]

Whistleblowers can begin submitting claims as soon as Congress passes Dodd-Frank and the President signs it into law. Although the SEC has 270 days following enactment to issue regulations implementing the new whistleblower bounty program,[24] whistleblowers may receive credit for information provided to the SEC prior to the effectiveness of those regulations,[25] even if the underlying violation occurred prior to the enactment of Dodd-Frank.[26]

### Interaction With SEC Cooperation Initiative

The SEC's expanded authority to award bounties to individuals – including individuals who have exposure to underlying violations of the securities laws – complements a recent initiative by the SEC to foster cooperation by individuals in SEC investigations and related enforcement actions. In

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19 *Id.*

20 *Id.*

21 *Id.* Without the loss of its status as confidential in the hands of the SEC, the SEC has discretion to share whistleblower information with the U.S. Attorney General, appropriate state or federal regulatory agencies, SROs, state attorneys general in connection with criminal investigations, the Public Company Accounting Oversight Board, and foreign securities and law enforcement authorities. *Id.*

22 *Id.*

23 *Id.* Sarbanes-Oxley also prohibits public companies and their officers and employees from retaliating against an employee because of any lawful act done by the employee to provide information to a regulatory or law enforcement agency or to Congress, or to participate in a lawsuit in connection with a violation of the securities laws. *See* 18 U.S.C. § 1514A(a). Employees who experience prohibited discrimination can file a complaint with the Secretary of Labor and, if the Secretary of Labor fails to issue a decision within 180 days, in an appropriate federal district court. *Id.* § 1514A(b). Dodd-Frank amends Sarbanes-Oxley by, among other things, extending the period of time during which employees may file claims and clarifying that employees of subsidiaries and affiliates of public companies receive the same protection as employees of issuers. Dodd-Frank §§ 922(c) & 929A. Knowingly retaliating against any person, including an employee, for providing truthful information regarding a federal offense to a law enforcement officer also constitutes a federal crime punishable by up to 10 years imprisonment and/or fines. 18 U.S.C. § 1513(e).

24 Dodd-Frank §§ 922(a) & 924(a).

25 Dodd-Frank § 924(b).

26 Dodd-Frank § 924(c).

January 2010, the SEC released an analytical framework for assessing and crediting cooperation by individuals.[27] Under the framework, the SEC considers:

- the value of assistance provided by an individual, including, *inter alia*, whether the individual's cooperation resulted in substantial assistance to the investigation, and whether the individual was first to report the misconduct to the SEC;
- the importance of the investigation within the context of the SEC's enforcement program;
- society's interest in holding the cooperating individual accountable for any misconduct; and
- the cooperating individual's "personal and professional profile."[28]

If warranted under the facts and circumstances of a particular case, the SEC will credit an individual's cooperation by reducing charges or sanctions, or even by declining to pursue an otherwise merited enforcement action.[29]

Individuals with knowledge of and exposure to violations of the securities laws now face a stark choice. They can provide information to the SEC and thereby potentially avoid the consequences of their misconduct while reaping a significant financial reward, or they can keep information regarding misconduct to themselves, hope that no other person with knowledge of the misconduct reports it to the SEC and face the possibility of an SEC enforcement action followed by the full sanction available under the law. This dichotomy creates a powerful incentive for insiders with knowledge of securities law violations to provide information to the SEC.

### Congressional Oversight of the New SEC Whistleblower Bounty Program

Dodd-Frank contains monitoring and oversight provisions designed to support the effectiveness of the new SEC whistleblower bounty program. First, to ensure that the whistleblower bounty program does not slip to the bottom of the SEC's list of priorities, Dodd-Frank mandates that the program be administered by a separate whistleblower office to be established within the SEC.[30] The whistleblower office will report annually to the Senate Banking and House Financial Services Committees "on its activities, whistleblower complaints, and the response of the [SEC] to such complaints."[31]

Second, Dodd-Frank requires the OIG to study the whistleblower bounty program established by Dodd-Frank.[32] The study will address many criticisms that the OIG leveled at the SEC's current insider trading bounty program. Among other things, the OIG is required to consider:

- whether SEC rules relating to filing whistleblower bounty claims are user-friendly;
- whether the whistleblower bounty program is promoted on the SEC's website and widely publicized;

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27 Policy Statement Concerning Cooperation by Individuals in its Investigations and Related Enforcement Actions, 17 C.F.R. § 202.12 (2010).

28 *Id.*

29 *Id.*

30 *See* Dodd-Frank § 924(d).

31 *Id.*

32 Dodd-Frank § 922(d).

- whether the SEC responds promptly to whistleblowers and updates whistleblowers regarding the status of their claims;
- whether the minimum and maximum award levels are sufficient to attract information or are so high that they attract illegitimate whistleblower claims; and
- whether Congress should empower securities whistleblowers who have already attempted to pursue a whistleblower claim through the SEC to file *qui tam*-style private actions on behalf of the government against persons who have committed securities fraud.[33]

Within 30 months of the enactment of Dodd-Frank, the OIG is required to submit a report on its findings to the Senate Banking and House Financial Services Committees and post the report on the SEC's website.[34]

Third, each year the SEC is required to submit a report to the Senate Banking and House Financial Services Committees on the whistleblower bounty program.[35] The SEC report must contain, *inter alia*, a description of the number and types of cases in which bounties were awarded.[36]

### The IRS Experience as a Predictive Model

The minimum-maximum award and judicial review provisions contained in Dodd-Frank are modeled after the whistleblower bounty program of the IRS established pursuant to the Tax Relief and Health Care Act of 2006.[37] The IRS whistleblower bounty program requires the IRS to pay between 15% and 30% of recoveries on amounts in dispute over $2 million.[38] In using the IRS's program as a model, the Senate Banking Committee "determined that enforceability and relatively predictable level of payout will go a long way to motivate potential whistleblowers to come forward," and would improve upon the disappointing performance of the SEC's existing insider trading bounty program.[39]

Although no awards have yet been paid, the early track record of the IRS whistleblower bounty program suggests that the potential for large cash rewards will attract tips. The IRS experienced a pronounced and sustained uptick in whistleblower claims following the establishment of its whistleblower bounty program. In 2007, the year that the IRS created its whistleblower office, the IRS received 83 claims alleging total underreported income of $8 billion.[40] In contrast, in 2008, the IRS received 1,890 claims alleging total underreported income of $65 billion.[41] Indeed, the IRS whistleblower bounty program also led to the growth of law firms that specialize in tax whistleblower claims.[42] The establishment of a more aggressive SEC whistleblower bounty pro-

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33 *Id.*

34 *Id.*

35 Dodd-Frank § 922(a).

36 *Id.*

37 S. Rep. No. 111-176, at 111 (2010).

38 *See* Pub. L. 109-432, § 406, 120 Stat. 2922, 2958-60 (2006) (codified at 26 U.S.C. § 7623).

39 *See* S. Rep. No. 111-176, at 112 (2010).

40 Treasury Inspector General for Tax Administration, Deficiencies Exist in the Control and Timely Resolution of Whistleblower Claims 6 (Aug. 20, 2009), *available at* http://www.treas.gov/tigta/ auditreports/2009reports/200930114fr.pdf.

41 *Id.*

42 Ryan J. Donmoyer, *IRS Whistleblower Claims Quadruple on Informants (Update1)*, Bloomberg.com, Oct. 1, 2009.

gram may lead to the growth of a similar cottage industry among plaintiffs' lawyers who already specialize in securities litigation.

The IRS's experience with its whistleblower bounty program also provides insight into procedural complications that the SEC will likely face when implementing its new whistleblower bounty program. These include thorny problems relating to:

- the receipt and use of privileged and confidential information;
- the possibility that documents or information may have been obtained in violation of relevant professional conduct rules; and
- the possibility that information could be procured in violation of the Fourth Amendment.

These issues are most likely to arise when current employees of investigated entities provide information to the SEC.

The Office of the Chief Counsel of the IRS has issued guidance to assist the IRS staff in dealing with privilege and taint issues in connection with the whistleblower bounty program.[43] Presumably, the SEC will issue similar guidance. The IRS guidance instructs the staff to coordinate with the Chief Counsel's office to conduct taint reviews of potentially privileged or confidential information provided by whistleblowers.[44] If an attorney, accountant or other professional blows the whistle on a client, the taint review considers the potential impact of any ethical duties owed by that person.[45]

The IRS Chief Counsel's guidance further instructs the IRS staff to take certain steps to ensure that the IRS remains a "passive participant" in the collection of information from current employees of investigated entities.[46] This guidance, sometimes called the "one bite" rule,[47] is designed to ensure that a current employee does not become an "agent" of the IRS such that the person's conduct could be deemed an illegal search and seizure, which could taint any information provided by that person.[48] In February 2010, the IRS Chief Counsel's Office modified the one bite rule to permit the IRS staff to have limited follow-up contacts with whistleblowers who are current employees of an investigated entity.[49]

In at least one tax collection action, *United States v. Comco Management Corp.*, a federal magistrate judge ordered the return of documents that were taken by an IRS whistleblower from his current

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43 *See* I.R.S. Chief Couns. Notice CC-2010-004 (Feb. 17, 2010); I.R.S. Chief Couns. Notice CC-2008-011 (Feb. 27, 2008).

44 I.R.S. Chief Couns. Notice CC-2010-004.

45 *Id.*; *see also* Model Rules of Prof'l Conduct R. 1.6 (except in specific enumerated circumstances, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, [or] the disclosure is impliedly authorized in order to carry out the representation"); La. Rules of Prof'l Conduct R. 4.2 (forbidding attorneys to communicate about the subject of a representation with a person they know to be an employee of a represented organization if the person is a supervisory employee or regularly consults with counsel, has authority to obligate the organization or is a person whose conduct could be imputed to the organization for purposes of liability); *In re Shell Oil Refinery*, 143 F.R.D. 105 (E.D. La. 1992) (ordering plaintiffs' counsel in a class action lawsuit to produce documents that were obtained *ex parte* from an employee of the defendant, noting that such documents may have been procured in violation of La. R. of Prof'l Conduct 4.2, and forbidding plaintiffs to make use of information contained in the documents).

46 I.R.S. Chief Couns. Notice CC-2010-004, at 1-3; I.R.S. Chief Couns. Notice CC-2008-011, at 1-2.

47 I.R.S. Chief Couns. Notice CC-2008-011, at 2.

48 I.R.S. Chief Couns. Notice CC-2010-004, at 1-3.

49 *Id.*

employer and provided to the government.[50] The magistrate judge expressed concern regarding the involvement of an assistant U.S. attorney in the collection of the documents while the defendant employed the whistleblower.[51] Thus, he ordered the IRS whistleblower office to cease reviewing 25 boxes of documents and return them to the defendant for a privilege review.[52] He also precluded the government from using any information contained in documents that ultimately proved to be privileged.[53] The magistrate's order was subsequently vacated, but only pursuant to a stipulated agreement between the parties that still required the government to deliver the documents to the defendant for a privilege review.[54] As the SEC begins to act as the initial recipient and reviewer of potentially privileged or tainted information from whistleblowers, it could face similar litigation.

### What to Do Now: Review of Compliance Programs and Response Protocols

The individual incentives described above may test internal compliance programs, and will create risks for firms where internal programs are not effective. This is a sensible juncture for firms to reconsider the effectiveness of those programs to ensure that they are appropriately designed and that they will perform when tested, particularly with respect to whistleblower reporting and internal escalation procedures. Areas to consider include:

- Verifying that the current hotline process/protocol ensures that accounting, securities law and FCPA complaints will be quickly and appropriately escalated internally;
- Verifying that human resources personnel are sufficiently trained to ensure proper follow-up if employees defend themselves in the context of negative performance evaluations or terminations by alleging that they were asked to engage in, or otherwise knew about, misconduct. Consideration should be given to ensuring that, when processing employees who leave the company, specific questions are asked regarding knowledge of any accounting, securities law or FCPA issues so that employees report them to the company rather than leaving and then reporting them to the SEC in order to claim a bounty;
- Ensuring that employee conduct manuals place an express obligation on employees to report potential misconduct to appropriate company personnel, and that employees are regularly trained and required to acknowledge this obligation;
- Verifying that proactive monitoring and tracking controls are in place to identify potential accounting, securities law and FCPA issues so that the company can identify and respond to these before a whistleblower does; and
- Including a requirement in third-party contracts that the third party provide notice of any compliance issues.

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50 *See* Tentative Ruling and Minute Order, *United States v. Comco Mgmt. Corp.*, No. 8:08-cv-00668 (C.D. Cal. Dec. 1, 2009).

51 *Id.*, Tentative Ruling at 3-4.

52 *Id.*, Minute Order at 1.

53 *Id.*, Minute Order at 2.

54 Stipulation Regarding Joint Request to Vacate the Magistrate Judge's Order, *United States v. Comco Mgmt. Corp.*, No. 8:08-cv-00668 (C.D. Cal. Dec. 18, 2009); Amended Minute Order, *United States v. Comco Mgmt. Corp.*, No. 8:08-cv-00668 (C.D. Cal. Jan. 11, 2010).

Companies should also review their personnel procedures to ensure that they are appropriately cognizant of statutory protections afforded to whistleblowers:

- Evaluation and disciplinary procedures should ensure that the company's reasons for taking specific employment actions are clearly and adequately documented.

- Companies routinely should ask appropriate questions of employees who are evaluated, disciplined or terminated so that those employees cannot later claim to have suffered retaliation.

This is also a propitious time to review protocols for responding to potential issues once they are identified. The enhanced whistleblower bounty program will clearly complicate the judgments that are part of that process. Certainly the already difficult judgment of when to self-report indications of potential misconduct will be further stressed, since the prospect of a substantial bounty and the potential job security that may accompany whistleblower status may effectively place a company in competition with its employees to be the first mover. That can create significant pressure on companies to self-report as early as possible to preserve cooperation credit, even if underlying facts are not completely understood.[55] Conversely, a whistleblower cannot claim a bounty if he is not the "original" source of the information that leads to an enforcement action.

The prospect of lurking bounty hunters also places renewed emphasis on the need to be vigilant in establishing and maintaining privilege over initial assessments of misconduct. The risk that an insider may seek whistleblower status to claim a bounty increases over time if a company waits to report confirmed or suspected misconduct, particularly if more people within the company learn of the possible misconduct outside of a privileged context.

## Conclusion

Taken together, the whistleblower bounty and protection provisions and individual cooperation initiative represent a sustained effort to change the dynamic by which actionable information is provided to the SEC's Enforcement Division. It is difficult to predict whether the SEC's efforts will succeed, or indeed what success will look like. However, it will be important for entities that are subject to the securities laws to be proactive and vigilant in positioning themselves under this new regime.

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55 James Tillen, George Clark and Kevin Mosley, *Whistleblower Rewards Could Drastically Change FCPA Practice*, Corporate Compliance Insights, Apr. 1, 2010.