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SEC ADOPTS FINAL RULES ON DODD-FRANK ACT WHISTLEBLOWER PROVISIONS

On May 25, 2011, the SEC adopted final rules to implement the whistleblower provisions of the Dodd-Frank Act. Overall, the final rules appear more permissive and deferential to potential whistleblowers than the proposed rules, but they do add incentives for whistleblowers to make use of corporate compliance processes. As expected, the final rules, like the proposed rules, do not require employees to first report alleged wrongdoing internally through a company's corporate compliance system, even though there were numerous comments from the corporate community urging such a requirement.

The SEC's final rules were mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The extent to which whistleblowers should be required to first report problems internally was a significant point of debate during the proposal stage for the rules. The SEC made certain changes in its final rules to encourage internal reporting but stopped short of requiring it. These changes include important items such as: (i) providing for potentially higher rewards to whistleblowers who first report internally; (ii) permitting whistleblower eligibility for a reward if there is first a report of alleged wrongdoing to the company and the company reports it to the SEC; and (iii) permitting the whistleblower to be treated as part of the whistleblower program from the date of internal reporting, as long as a report to the SEC follows within 120 days. The final rules provide anti-retaliation protection in situations where the whistleblower possesses a reasonable belief that the information provided to the SEC relates to a possible securities law violation. In addition, under the final rules it is unlawful for anyone to interfere with the whistleblower's efforts to communicate with the SEC. The final rules also provide the procedures for alleging wrongdoing to the SEC and for making a claim.

The SEC's Fact Sheet "Establishing a Whistleblower Program," covering implementation of the final rules, can be found by clicking on the following link:
<http://www.sec.gov/news/press/2011/2011-116.htm>.

The SEC's final rules will be effective 60 days after they are submitted to Congress or published in the Federal Register.

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