**CORPORATE COMPLIANCE PROGRAMS
AFTER DODD-FRANK**

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The question on everyone's mind is how do I modify my compliance programs in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Securities and Exchange Commission's new whistleblower regulations. On some level, not much has changed. The Sarbanes-Oxley Act of 2002 required complaint procedures for accounting issues, and disclosure with respect to codes of ethics for certain senior executives.[1] Publicly traded companies listed on the NYSE or Nasdaq have been required for some time to have codes of conduct for all employees, directors and officers, including effective complaint procedures and compliance standards to facilitate the effective operation of those codes.[2] The Federal Sentencing Guidelines,[3] the Department of Justice's Principles of Federal Prosecution of Business Organizations,[4] and the SEC's Seaboard report[5] have long placed a premium on effective corporate

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[1] Sarbanes-Oxley Act of 2002 §§ 301, 406, 15 U.S.C. §§ 78f(m)(4), 7264.

[2] NYSE Listed Company Manual Section 303A.10; Nasdaq Equity Rule 5610.

[3] http://www.ussc.gov/Guidelines/2010_guidelines/Manual_HTML/8b2_1.htm

[4] Department of Justice "McNulty Memo," Dec. 12, 2006, available at http://www.justice.gov/dag/speeches/2006/mcnulty_memo.pdf Some state and local prosecutors have adopted similar guidelines. See, e.g., District Attorney of N.Y. County, Considerations in Charging Organizations, available at www.manhattanda.org/whatsnews/press/2010-06-01d.shtml

[5] Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement of the Relationship of Cooperation to the Agency Enforcement Decisions, SEC Rel. Nos. 34-44969 and AAER-1470 (Oct. 23, 2001) ("Seaboard Report"), available at http://www.sec.gov/litigation/investreport/34-

compliance programs. Complaint procedures have always been an integral part of any such program.

What Dodd-Frank does is create powerful incentives for employees to go directly to the Commission about violations of any federal securities laws, including the Foreign Corrupt Practices Act. This puts a significant premium on having a broad, *truly effective* compliance program and a *real* culture of compliance. Cutting through all the technical issues and requirements, companies should ask themselves three questions:

1. Is responsibility for compliance and ethics universally understood throughout all levels of the organization – from agents and the most junior employees to senior management and the directors – to be an important component of job and company success? Is this reflected in performance evaluations?

2. What evidence do the directors have that senior management actively promotes a values-based approach to ethics and compliance that is appropriately synchronized with the corporate culture? Is the right tone being set at the top in what behaviors are rewarded and punished? Is executive management talking to employees enough about the importance of compliance and internal reporting?

3. Has the company focused on the key risks in its business and taken adequate steps to ensure compliance with the law? The nature of the risk will vary by company. For some companies, it could be potential violations of the Foreign Corrupt Practices Act, for others it could be promoting off-label sales of the company's drugs or toxic waste discharge into drinking water. Each company must identify its own critical vulnerabilities and ensure that adequate compliance mechanisms are in place.

The Landscape Before Dodd-Frank

The Sarbanes-Oxley Act of 2002 was passed in response to the Enron and WorldCom accounting scandals. It contains two provisions on public-company compliance programs: Section 406 requires public companies to disclose whether the company has adopted a code of ethics applicable to its CEO and senior financial officers

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44969.htm; SEC Enforcement Manual at xx, available at http://www.sec.gov/divisions/enforce/enforcementmanual.pdf and if not, why not. This effectively mandated the creation of such codes at public companies. If a company adopts a code, the code must be in writing and include standards reasonably designed to deter wrongdoing and to promote honest and ethical conduct; full, fair, accurate, timely and understandable disclosures to the SEC and the public; compliance with applicable laws, rules and regulations; prompt internal reporting of violations of the code; and accountability for adherence to the code. Section 301 requires the audit committees of listed companies to establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls and auditing matters, including procedures for the receipt of such complaints on a confidential and anonymous basis.[6]

Both the NYSE and Nasdaq require listed companies to implement certain compliance standards and procedures that go further than Sarbanes-Oxley. NYSE Listed Company Manual Section 303A.10 requires listed companies to establish company-wide codes of business conduct applicable to all directors, officers and employees (not just the CEO and senior financial officers as mandated by Sarbanes-Oxley) that should address at least the following topics: conflicts of interest; corporate opportunities; confidentiality; fair dealings with customers, suppliers, competitors and employees; protection and proper use of company assets; and compliance with laws, rules and regulations. Nasdaq Equity Rule 5610 requires companies to have a similar code of ethics that also extends to all employees, officers and directors.

[6] As mandated by section 301, these requirements have been implemented through rules adopted by the SEC (Rule 10A-3 under the Securities Exchange Act of 1934); the NYSE (NYSE Listed Company Manual Section 303A.07(b)(iii)) and Nasdaq (Nasdaq Equity Rule 5605(c)(3)).

Section 406 and the Nasdaq and NYSE rules require that the code of ethics be publicly available. Nasdaq believes that the publicly available code "is intended to demonstrate to investors that the board and management of Nasdaq companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct."[7]

The code for NYSE listed companies must contain provisions encouraging reports of illegal or unethical behavior and preventing retaliation against those who make such reports; compliance standards and procedures facilitating the effective operation of the code; and enforcement mechanisms ensuring prompt and consistent action in response to code violations. Similarly, Nasdaq Equity Rule 5610 requires codes of conduct to "contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations."

Section 806 of Sarbanes-Oxley contains a broad anti-retaliation provision. Without teasing out the nuances, Sarbanes-Oxley prohibits employers who are covered by the act[8] from discriminating against employees "because" the employee engaged in

[7] Nasdaq Equity Rule 5610, IM-5610.

[8] Sarbanes-Oxley's whistleblower protections extend to all companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that are required to file reports under section 15(d) of the 34 Act. Dodd-Frank extends these

the following activities: (1) providing information concerning violations of the wire fraud, mail fraud, bank fraud or securities fraud statutes (a) to a federal regulatory or law enforcement agency, (b) any member or committee of Congress, or (c) "a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct)"; or (2) filing or assisting in a proceeding related to "an alleged violation" of the wire fraud, mail fraud or securities fraud statutes.[9]

Companies have had plenty of incentives to adopt effective compliance programs even absent Sarbanes-Oxley and the NYSE and Nasdaq rules. The Department of Justice has made it clear that whether an organization has an effective compliance program will be a factor in deciding whether to seek an indictment of the company in the event that employees engage in criminal conduct. DOJ has not prescribed a particular program, but says that they will ask two questions: "Is the corporation's compliance program well designed?" *and* "Does the corporation's compliance program work?" Prosecutors are

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protections to employees of subsidiaries and affiliates of such companies, as well as to employees of nationally recognized statistical rating agencies.

[9] There is a split in authority on whether mail, wire and bank fraud must relate to fraud on shareholders or whether fraud under those statutes without regard to its impact on shareholders is sufficient. Compare, e.g., Sylvester v. Parexel International LLC, ARB Case No. 07-123, ALJ Case Nos. 2007 SOX-039 & 2007-SOX-042 (May 25, 2011) (en banc) (Sarbanes-Oxley's whistleblowing protections extend to any fraud covered by the mail, wire or bank fraud statutes without regard to whether the fraud was directed at shareholders and without regard to whether the fraud was material to the company) with, e.g., Livingston v. Wyeth, Inc., 520 F.3d 344, 354 (4th Cir. 2008); Allen v. ARB, 514 F.3d 468 (8th Cir. 2008); Bishop v. PCS Admin. (USA), Inc., No. 05 C 5683, 2006 WL 1460032, at *9 (N.D. Ill. May 23, 2006); Plantone v. Flyi, Inc., ARB Case No. 04-154, ARB Case No. 2003-SOX-00027, at 15 (ARB Sept. 29, 2006); Marshall v. Northrup, ALJ Case No. 2005-SOX-00008 (ALJ June 22, 2005).

required to determine "whether a corporation's compliance program is merely a 'paper program' or whether it was designed and implemented in an effective manner," including whether the program is adequately resourced.[10] The SEC took a similar approach in the Seaboard report on when the Commission will exercise its discretion not to bring enforcement proceedings against corporations who violate the federal securities laws.[11]

The Federal Sentencing Guidelines provide that an effective compliance program is a significant factor in determining the sentence to be imposed on corporations convicted of criminal conduct.[12] The Guidelines outline the parameters of an effective program, and these have become fairly standard in corporate America. In general, to have an effective compliance program, the company must:

- "[P]romote an organizational culture that encourages ethical conduct and a commitment to compliance with the law";
- Exercise "due diligence to prevent and detect criminal conduct";
- Ensure that the corporation's board is "knowledgeable about the content and operation of the compliance and ethics program and … exercise[s] reasonable

[10] Department of Justice "McNulty Memo," Dec. 12, 2006, at 14, available at http://www.justice.gov/dag/speeches/2006/mcnulty_memo.pdf. DOJ cites a number of antitrust cases for the proposition that the mere existence of a compliance program will not immunize a company from prosecution: A company "could not gain exculpation by issuing general instructions without undertaking to enforce those instructions by means commensurate with the obvious risks." United States v. Hilton Hotels Corp., 467 F.2d 1000, 1007 (9th Cir. 1972), quoted with approval in McNulty Memo at 13.

[11] SEC Rel. Nos. 34-44969 and AAER-1470 (Oct. 23, 2001), available at http://www.sec.gov/litigation/investreport/34-44969.htm; SEC Enforcement Manual, available at http://www.sec.gov/divisions/enforce/enforcementmanual.pdf

[12] http://www.ussc.gov/Guidelines/2010_guidelines/Manual_HTML/8b2_1.htm

oversight with respect to the implementation and effectiveness of the compliance and ethics program";

- Assign to "high-level personnel" overall responsibility for the compliance and ethics program and ensure that those carrying out the compliance program have adequate resources, appropriate authority and direct access to the board or a subgroup of the board;
- "[T]ake reasonable steps to communicate [its ethics and compliance program] periodically and in a practical manner" to the board, officers, employees and, where appropriate, the company's agents;
- "[H]ave and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation";
- Promote and enforce consistently the company's compliance and ethics program throughout the organization by (a) creating "appropriate incentives to perform in accordance with the compliance and ethics program," and (b) taking "appropriate disciplinary measures" against those who engage in criminal activity or who fail "to take reasonable steps to prevent or detect criminal conduct";
- Conduct monitoring and auditing to detect criminal conduct and periodically evaluate the effectiveness of the organization's compliance and ethics programs; and
- Respond appropriately to any criminal conduct.

Numerous statues impose similar requirements. For example, the Patient Protection and Affordable Care Act of 2010 requires that a broad range of providers, medical suppliers, and physicians adopt compliance and ethics programs.[13] Even before this legislation, the Department of Health and Human Services Office of Inspector General promoted the voluntary adoption of compliance programs throughout the healthcare industry and frequently insisted on the establishment of such programs when resolving civil fraud charges. And the number of whistleblower protection statutes is legion.[14]

Nor is the need for effective compliance programs limited to criminal conduct or violations of government regulations. Thirteen years ago, the Supreme Court decided two cases, *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), which held that employers are liable under Title VII for discriminatory actions of supervisors even when those acts do not result in tangible adverse employment actions, unless the employer exercised reasonable care to (a) prevent the discriminatory behavior and (b) take prompt remedial action when inappropriate behavior occurs. The EEOC has taken the position that "reasonable care generally requires an employer to establish, disseminate, and enforce an anti-harassment policy and

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[13] Healthcare Reform Law §§ 6102, 6401.

[14] There are over 100 federal statutes. See, e.g., Clean Air Act, 42 U.S.C. § 7622; CERCLA, 42 U.S.C. § 96010; Energy Reorganization Act, 42 U.S.C. § 5851; Federal Mine Safety and Health Act, 30 U.S.C. § 815(c); International Safety Container Act, 46 U.S.C. § 1506; OSHA, 29 U.S.C. § 660(c); Pipleline Safety Improvement Act, 49 U.S.C. § 60129; Toxic Substances Control Act, 15 U.S.C. § 2622. See generally Steven M. Kohn, Federal Whistleblower Laws and Regulations (2003). Numerous states have whistleblower protection statutes as well. See, e.g., 1980 Mich. Pub. Acts 469; N.J. Stat. § 34:19-1, et seq.

complaint procedure and to take other reasonable steps to prevent and correct harassment."[15]

Finally, the failure to implement an effective compliance and ethics program may breach the duty of care owed by directors, giving rise to potential liability. See, e.g., In re Caremark International Inc. Derivative Litig., 698 A.2d 959, 969-70 (Del. Ch. 1996).

Dodd-Frank

Against this backdrop, Congress adopted Dodd-Frank. Unlike Sarbanes-Oxley, Dodd-Frank does not impose any new obligations on companies to establish codes of ethics or compliance programs. However, Dodd-Frank alters significantly the dynamics of internal compliance programs by creating powerful financial incentives for employees to report violations of the federal securities laws to the Commission. The problem is that companies want to know about potential wrongdoing before the Commission does so they can investigate the issue, begin the remediation and self-report to the Commission and other authorities before the regulators become aware of the issue from other sources. Both the Department of Justice and the Commission place a premium on a company's voluntary disclosure of information in determining whether to seek an indictment or commence enforcement proceedings. Self-reporting also permits the company to frame the issue with regulators and law enforcement, at least initially. Dodd-Frank creates powerful incentives for whistleblowers to by-pass internal reporting and go directly to the SEC.

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[15] Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, available at http://www.eeoc.gov/policy/docs/harassment.html

Under section 922 of Dodd-Frank, the SEC "shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement" of "any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000." The award will be between 10 and 30 percent, as determined by the Commission based on criteria set forth in the statute and in the newly issued regulations.[16] Only the first person (or persons if they act jointly) to bring the information to the Commission can qualify for the award, since the term "original information" is defined as information not known to the Commission from any other source.

Previously, only whistleblowers who brought insider trading information to the Commission could qualify for a bounty.[17] The expansion to all federal securities laws is significant, and includes violations of the Foreign Corrupt Practices Act. Companies are legitimately concerned about whether anyone will use their internal complaint procedures at all any more, since employees stand to collect a significant bounty by going straight to the Commission.

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[16] Release No. 34-64545, Implementation of the Whistleblower Provisions of section 21F of the Securities Exchange Act of 1934 (May 25, 2011).

[17] 15 U.S.C. § 78u-1(e). In the 20 years preceding the enactment of Dodd-Frank, only five individuals received bounty awards under this provision. The aggregate amount of those five awards is approximately $160,000. Assessment of the SEC Bounty Program, Office of the Inspector General, U.S. Securities and Exchange Commission Report No. 474 (March 29, 2010), available at http://www.sec-oig.gov/reports/auditsinspections/2010/474.pdf .

The SEC sought to allay these concerns by creating incentives for employees to report violations initially to their employer: First, the regulations provide that whistleblowers will be deemed to have reported information to the Commission as of the day they first report the information to their employer so long as they report the information to the Commission within 120 days of making the initial report to their employer.[18] In other words, the whistleblower's place in line is preserved for 120 days while their employer investigates the issues. Second, the regulations attribute to a whistleblower who first reports internally all information subsequently reported by the company to the Commission following an internal investigation.[19] This means that if the whistleblower has information about only a small piece of the problem, but the company's internal investigation reveals a much larger problem and the company reports that information to the Commission, the whistleblower's award is based on the larger problem reported by the company rather than the narrow issue reported by the whistleblower. Finally, when determining the amount of an award, the Commission will take into account whether the whistleblower hindered a company's internal compliance program.[20]

Dodd-Frank also contains significant whistleblower protections. While the full parameters are beyond the scope of this paper, in brief they prohibit employers from taking any adverse action against employees who provide information to the Commission concerning possible violations of the federal securities laws and, according to the

[18] 17 C.F.R. § 240.21F-4(b)(7).

[19] 17 C.F.R. § 240-21F-4(c)(3).

[20] 17 C.F.R. § 240.21F-6(b)(3).

Commission, to employees of entities covered by Sarbanes-Oxley who engage in any activity required or protected by Sarbanes-Oxley.[21] Under Dodd-Frank, whistleblowers complaining of retaliation can go directly to federal district court, where they are entitled to a jury trial. The SEC also has the authority to bring enforcement proceedings to enforce Dodd-Frank's anti-retaliation protections.[22]

What To Do Now

Whether these incentives are sufficient, only time will tell, but companies are starting to wrestle with a number of thorny questions raised by the new Dodd-Frank bounty program:

- Whether to advise employees about the existence of the Dodd-Frank bounty program? Irrespective of how one comes out on this question, companies should encourage employees to utilize internal reporting channels, but they must be careful not to discourage employees from going to the Commission nor can they mandate that employees go to the company before making a report to the SEC. Even before Dodd-Frank, companies were prohibited by section 806 of Sarbanes-Oxley from taking any adverse action against an employee who reported securities law violations directly to the Commission. Irrespective of whether companies decide to affirmatively inform their employees about the Dodd-Frank bounty program, they must be prepared to

[21] 17 C.F.R. § 240.21F-2(b)(ii). There are significant arguments that this extension of Dodd-Frank to encompass all activities required or protected by Sarbanes-Oxley is directly contrary to the statute. See Allan Dinkoff, Dodd-Frank Whistleblower Protections: How Far Will It Go?, 3 Financial Fraud Law Rep. 722 (2011).

[22] 17 C.F.R. § 240.21F-2(b)(2).

answer questions about the program in a forthright and straightforward fashion.

- Whether to provide a monetary award to whistleblowers who utilize the company's internal reporting channels if the claim is found to have merit? At least some SEC staff attorneys have stated informally that they will take a dim view of company offers to pay bounties to employees who report internally before going to the Commission, characterizing such payments as hush money. However, that may be an initial overreaction, and it should be possible to develop such programs without raising those concerns, assuming that a company wants to go in that direction.

- Whether to publicize disciplinary actions (on a no names basis) taken as the result of complaints filed through the company's internal reporting channels?

- Whether and how to incorporate compliance and internal reporting into performance evaluations? This is particularly significant for executive officers in light of the requirement that the company explain in its proxy materials the basis on which compensation for executive officers is determined.

No consensus has emerged yet on these difficult questions, and different companies may come to different conclusions depending on their culture, business and types of employees. However, companies generally are undertaking a number of less controversial initiatives:

- Reexamining their compliance programs to ensure that they have adequate controls to prevent violations of the law in areas where the company's business makes them most vulnerable.
- Reexamining their existing whistleblower policies and procedures to ensure they emphasize the value the company places on employees coming forward with concerns and that the policies and procedures are easy to understand and follow. Many policies adopted after Sarbanes-Oxley limited the availability of the anonymous, confidential employee hotline and other internal complaint procedures to accounting and auditing matters within the audit committee's purview. Companies should seriously consider broadening such policies to cover all illegal and inappropriate behavior, if they have not done so already, and encouraging employees to use confidential internal hotlines and complaint mechanisms for any matter (particularly where employees are seeking anonymity and confidentiality).
- Reviewing procedures for investigating complaints and in many cases creating more formal processes.
- Reexamining existing policy assurances of protection against retaliation, along with guarantees of anonymity and confidentiality, in light of Dodd-Frank's new private right of action for whistleblowers and the SEC's ability (and stated intent) to enforce Dodd-Frank's anti-retaliation provisions. Companies are also refreshing manager training on these non-retaliation policies.
- Reinforcing manager training on how best to handle issues if employees raise them with management rather than through a hotline or other formal complaint procedure.
- Ensuring that any performance management or disciplinary action against a whistleblower is reviewed first by HR and legal. HR and legal should satisfy themselves that any such action is being taken for non-retaliatory reasons, including ensuring that others similarly situated are being treated in a similar fashion. HR and legal also should be involved in decisions concerning compensation, performance reviews and promotion to ensure that whistleblowers do not have any legitimate claim that they are being treated less favorably because they came forward with concerns. All of these actions should be documented in an appropriate fashion, which is easier said than done. It may also be useful to set up a direct line of communication between whistleblowers and HR so that whistleblowers can flag immediately any situation where they feel that they are being treated inappropriately, such as not being invited to a client or networking event.
- Reviewing and strengthening existing procedures for logging, evaluating, investigating, signing off and, where appropriate, responding to complainants on the disposition of complaints. Companies generally are not applying a "materiality" filter in assessing the merits of a particular employee complaint regarding a possible federal securities law violation, given the SEC's express

rejection of such a standard for purposes of the Dodd-Frank regulations. Similarly, a materiality filter generally should not be applied to reports of misconduct that do not relate to possible violations of the securities laws, although the nature of the alleged violation will clearly impact the scope of the investigation.

- Developing procedures for communicating with whistleblowers, both as to the progress of the investigation and its eventual outcome.

It also is important not to lose site of the basics for effective compliance and ethics program:

- ***Directors and senior management must be engaged in the design, implementation and maintenance of compliance and ethics programs:*** Senior management is responsible for these programs, but boards must be knowledgeable about the content and operation of the programs and exercise reasonable oversight as to both their implementation and their effectiveness. Commentary to the 2010 amendments to the Sentencing Guidelines make it clear that high-level personnel are expected to be aware of the organization's compliance programs and of the steps being taken to ensure that the programs are effective in reducing the risk that the company will violate the law.

- ***Timely reports to the board:*** Companies must develop and implement a policy for determining under what circumstances and in what time frame the board or an appropriate board committee should be informed of: (i) a concern, complaint or report about non-compliant behavior, including but not limited to potential non-compliance by a director, officer, senior manager or any other personnel with authority for issues relating to compliance, audit, accounting or internal controls; and (ii) any request for a waiver of the company's standards of conduct or policies (and any related disclosure obligations).

- ***Regular communications from the highest levels of the company:*** The board at times, but primarily the CEO, must communicate regularly to all levels of the organization the importance of ethical conduct and compliance with law, regulation and company policies as well as the value that the company places on employees utilizing internal procedures.

- ***A senior manager must be assigned overall responsibility for these programs:*** The individual[s] to whom day-to-day operational responsibility is delegated must have adequate resources and authority, and report regularly to senior management and the board (or appropriate board committee).

- ***Written and widely distributed code of ethics:*** Companies must develop and distribute to all employees, officers and directors written standards of conduct and related policies designed to promote compliant behavior and disclosure about concerns or instances of non-compliant behavior.

- ***Compliance and ethics training must be undertaken at all levels:*** Compliance and ethics training should be designed to communicate, in a practical and straightforward manner, the corporation's standards and procedures, as well as other relevant aspects of the compliance and ethics program. Such training should include all corporate personnel, including directors, officers, employees and even agents.

- ***Effective complaint procedure:*** Anonymous and confidential systems for employees and agents to report concerns and seek guidance with respect to *any* questionable conduct without threat of retaliation for whistleblowing is a necessary component, as are steps to audit, monitor and evaluate the program. A reporting system that provides a means for anonymous and confidential reporting of accounting and auditing concerns (as required by Sarbanes-Oxley) but not for the similar reporting of other types of concerns will most likely not be sufficient. Companies must develop and implement a system for logging-in the concerns, complaints or reports about non-compliant behavior, investigating such matters as appropriate, responding with disciplinary action as appropriate and recording the status and results of investigations and any corresponding action taken with regular reports to the board or to an appropriate board committee.

- ***Incentives and discipline should be used to promote compliance:*** Appropriate incentives are needed to encourage compliance, and misconduct must be consistently and appropriately sanctioned by disciplinary action.

- ***Prohibition against retaliation:*** Companies must protect from retaliation employees who raise compliance concerns, seek guidance or report non-compliant behavior.

- ***Periodic evaluations:*** Companies need to engage in periodic reviews, assessments and audits of both the compliance program itself and of other key areas of company operations that may provide information about the effectiveness of the compliance program.

Conclusion

Some commentators suggest that the hoopla surrounding Dodd-Frank's whistleblower provisions is much a do about nothing. After all Dodd-Frank was in effect for almost a year before the SEC promulgated its regulations, and the Commission staff reported only an up tick in whistleblower reports, not a flood during this period. Time will tell whether the new regulations and accompanying publicity create a significant new flow of tips. However, even without a significant increase in tips, whistleblowers now have a financial interest in the information they provide, which they never did before. At the very least, this has the potential to change the dynamic between companies and employees who report wrongdoing. It also increases the pressure to deal with issues quickly, since there is a significant risk that whistleblowers will go to the Commission within a 120 days of making an internal complaint. At the very least, Dodd-Frank will have an impact on corporate compliance by forcing a rigorous dialog throughout corporate America about how to implement effective compliance and complaint procedures.