

## **Whistleblower Procedures Inconsistent with French, German Law?**

**August 10, 2005**

Under the Sarbanes-Oxley Act of 2002, and related stock exchange and Nasdaq listing standards, the audit committees of public companies have adopted procedures for handling complaints and grievances relating to accounting, internal control, and auditing matters, including anonymous reporting of such issues. In addition, companies have adopted procedures for implementing required codes of conduct and ethics.

For companies with operations in France and Germany, the legality of such whistleblower procedures has been called into question.

In France, the French Data Protection Authority (La Commission Nationale de l'Informatique et des Libertés (CNIL)), an administrative agency that oversees processes involving the collection or compilation of personal data, recently decided that two companies' reporting procedures were in violation of French privacy law. The two U.S. companies, McDonald's Corp. and CEAC, a division of Exide Technologies, had sought CNIL's approval of their whistleblower hotline procedures. In June 2005, CNIL announced that both sets of proposed reporting procedures would violate French law and it refused to authorize the use of such procedures. CNIL was concerned that anonymous reporting would lead to malicious false reports of misconduct and determined that the risk of malicious reporting was disproportionate to the benefit of the hotlines. You should note that there is an obligation to file procedures with the CNIL before they are implemented if files or records will be maintained in France, and that some U.S. companies may have overlooked that filing requirement.

Shortly after the CNIL decision, a German labor court invalidated portions of Wal-Mart's employee code of conduct, including the provision for anonymous reporting. While certain legal reports on the CNIL decision have analogized the German decision to the CNIL decision, the German decision appears to have a different basis. The German labor court found that Wal-Mart did not consult with its works council, which is an employee representative body, with regard to its policies concerning the reporting procedures. Thus, the issue appears to have been one of procedure relating to German works council rules, not a substantive decision banning anonymous reporting.

We have discussed these decisions with both the Securities Exchange Commission and the New York Stock Exchange, and our colleagues in France and Germany are monitoring developments there. We would be happy to provide you with updates and further guidance.

Please contact one of the following Morgan Lewis attorneys for additional information:

**New York**

Michael A. Curley                      212.309.6711                      mcurley@morganlewis.com

**Washington, D.C.**

Frank G. Zarb, Jr.                      202.739.5741                      fzarb@morganlewis.com

**Frankfurt**

Juergen Beninca                      +49.69.7140.0719                      jbeninca@morganlewis.com

**Paris**

Francois Vergne                      +33 (0) 1 5330.4440                      fvergne@morganlewis.com

German and French language editions of this LawFlash are forthcoming. Should you want to receive either or both of those editions please contact Marketing at [publications@morganlewis.info](mailto:publications@morganlewis.info) with your preference.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as imparting legal advice on any specific matter.  
© 2005 Morgan, Lewis & Bockius LLP. All Rights Reserved.

