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Financial Reform Act Creates Whistleblower Provisions Likely to Increase FCPA Enforcement

The Financial Reform Act includes whistleblower protections that may increase the reporting of FCPA violations, and provides incentives for reporting information relating to the violation of securities laws.

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On July 21, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Financial Reform Act), which includes new whistleblower protections that could potentially increase reporting of alleged Foreign Corrupt Practices Act (FCPA) violations. The Financial Reform Act provides incentives for whistleblowers to report information "relating to a violation of the securities laws" to the U.S. Securities and Exchange Commission (SEC). The whistleblower provisions provide a powerful monetary incentive to report suspected violations of the FCPA, which is part of the Securities Exchange Act of 1934.

Section 922 of the Financial Reform Act amends the Securities Exchange Act to provide for monetary awards and protection against retaliation for whistleblowers who provide "original information" to the SEC relating to a violation of securities laws. If the reported information leads to the "successful enforcement" of a covered judicial or administrative action by the SEC of over $1 million, the whistleblower is entitled to between 10% and 30% of the imposed monetary sanctions. In addition, Section 922 authorizes the SEC to share whistleblower-provided information with enumerated federal, state, and foreign enforcement authorities.

The Financial Reform Act's whistleblower provisions represent yet another FCPA enforcement tool that the SEC has at its disposal. Within the past year, the SEC formed a specialized FCPA enforcement unit, established a San Francisco–based enforcement group focusing on Asia and the IT industry, and announced an Enforcement Cooperation Initiative, which includes the use of cooperation agreements, deferred prosecution agreements, and nonprosecution agreements to encourage individuals to aid investigations. At the same time, the Department of Justice (DOJ) has increased its investigative resources, adopted more traditional law enforcement techniques for FCPA enforcement, and continued to partner with foreign authorities to pursue FCPA and antibribery violations.

The False Claims Act's whistleblower provisions have played a significant role over the last decade in the DOJ's investigations and enforcement of fraud and abuse laws, incentivizing employees and eager attorneys to report suspected violations. With FCPA criminal and civil fines and penalty figures

consistently reaching the nine-figure mark, it is likely that the Financial Reform Act's whistleblower provisions will lead to an increase in FCPA investigations and enforcement.

As discussed in Morgan Lewis's April 15, 2010 Law Flash concerning the Financial Reform Act, "Proposed Rewards for FCPA Whistleblowers Raise Risk for Multinational Corporations,"[1] by Leslie R. Caldwell and Lisa Tenorio-Kutzkey, the Financial Reform Act's whistleblower provisions underscore the importance of implementing and maintaining a meaningful FCPA compliance program. Compliance programs should have clear procedures for reporting potential FCPA violations internally as well as processes for investigating and addressing any such violations.

Morgan Lewis has experience with developing, implementing, and refining FCPA compliance programs, conducting internal FCPA investigations, and defending clients against FCPA enforcement actions. If you have any questions regarding this LawFlash, or require assistance with any other issue relating to white collar defense and corporate investigations, please contact the authors, **Eric Kraeutler** (215.963.4840; ekraeutler@morganlewis.com), **Bethany Wong** (215.963.5608; bwong@morganlewis.com), and **Alison Tanchyk Dante** (215.963.5847; adante@morganlewis.com), or any of our white collar practitioners:

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[1] Available at http://www.morganlewis.com/pubs/FCPA_WhistleblowersRaiseRisk_LF_15apr10.pdf.

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