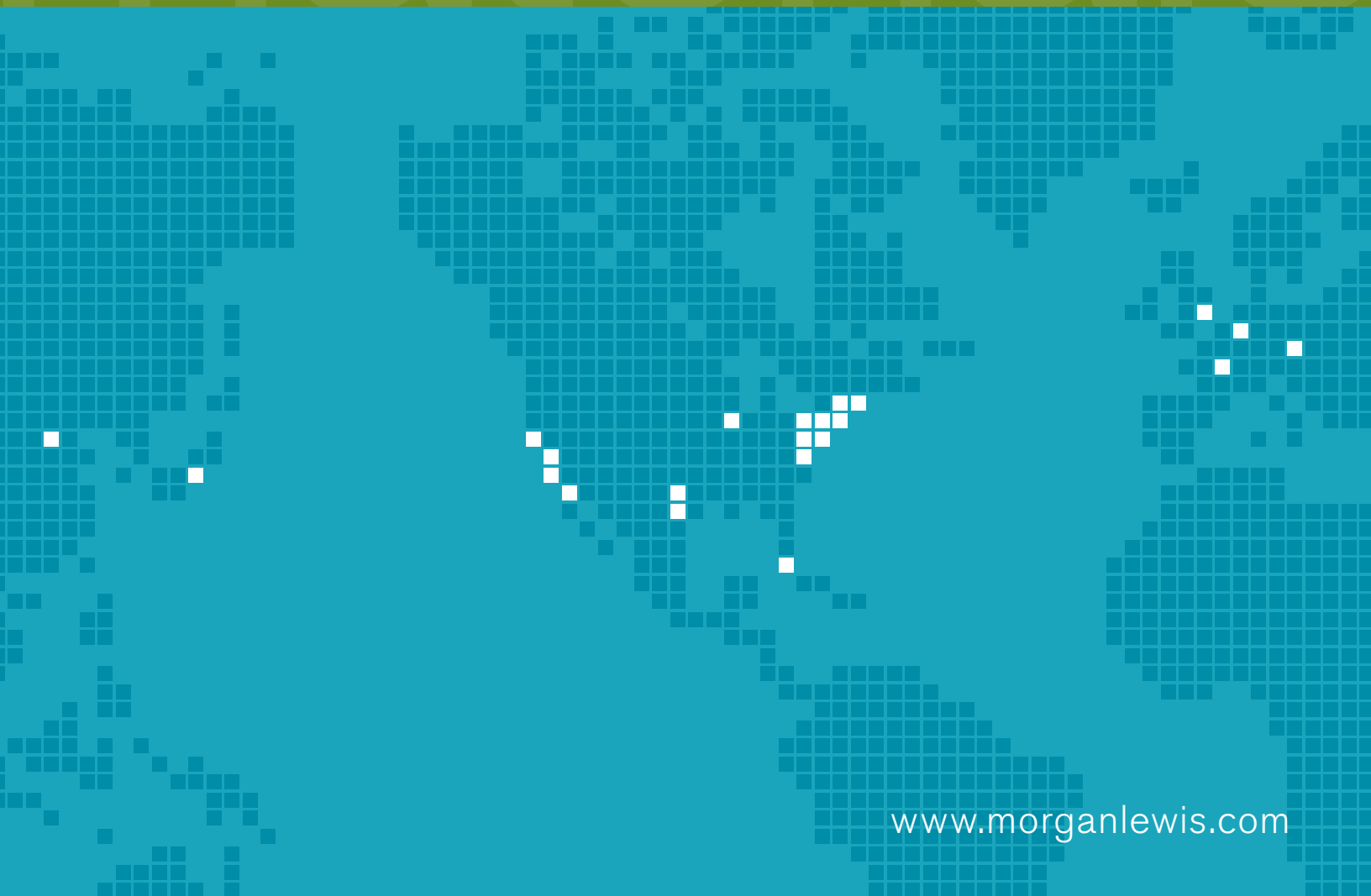
Morgan Lewis

roundtable road show

SEC's Final Rules for Implementing Dodd-Frank Whistleblower Provisions

New York • Philadelphia • Houston • Palo Alto

materials



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SEC's Final Rules for Implementing Dodd-Frank Whistleblower Provisions

Roundtable Road Show
New York | Philadelphia | Houston | Palo Alto

July 2011

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Agenda

- Overview of the Dodd-Frank Act whistleblower provisions
- Retaliation protection for whistleblowers
- SEC intake of tips, referrals, and complaints
- Impact on FCPA cases
- Obtaining cooperation credit from the SEC
- Impact on existing compliance programs

The Era of the Whistleblower

- False Claims Act Qui Tam Actions:
  - 15% to 30 Percent of Recovery
  - Provisions Strengthened/Defenses Narrowed
  - Increased Government Resources
  - Sophisticated Relator's Bar
- IRS Whistleblower Provisions
  - 5 % to 30 Percent of Recovery over $2M
  - 1/18/11 Proposed Amendments to Expand Scope
- Dodd-Frank
  - 10 % to 30 Percent of Recovery over $1M
  - New Rules Announced on 5.25.11

Overview of the Dodd-Frank Act Whistleblower Provisions

Overview of the Dodd-Frank Act Whistleblower Provisions

- New SEC whistleblower program
- Dodd-Frank amendments to SOX
- New CFTC whistleblower program
- New consumer finance whistleblower program

New SEC Whistleblower Program

The Whistleblower's Bounty: Eligibility Requirements

- New section 21F of the Securities Exchange Act of 1934, titled "Securities Whistleblower Incentives and Protection"
- The SEC will pay an award to one or more whistleblowers who:
  - Voluntarily provide the SEC
  - With original information
  - About any possible (reasonable belief) violation of federal securities laws that has occurred, is ongoing, or is about to occur (facially plausible)
  - That leads to a successful federal court or administrative enforcement action by the SEC
  - In which the SEC obtains monetary sanctions totaling more than $1M

Who Can Be a Whistleblower?

- A ***whistleblower*** is an individual who provides the SEC with information relating to a *possible* violation of the securities laws
- Almost any individual may be eligible to receive a whistleblower bounty (e.g., employees, former employees, vendors, agents, contractors, clients, customers, and competitors)
- Even individuals involved in securities violations may be eligible whistleblowers

Who Cannot Be a Whistleblower? Exclusions

- The Dodd-Frank Act bars certain individuals from award eligibility:
  - Officer/Director/Trustee/Partner
  - Anyone who has Compliance/Audit/Legal Responsibilities
  - Member of Investigation Firm
  - Public Accountant
  - Anyone who learns of a possible violation from any of the above individuals

Who Cannot Be a Whistleblower? Exceptions to the Exclusions

- HOWEVER, attorneys, officers, directors, auditors, or compliance personnel are eligible for whistleblower awards IF:
  - they reasonably believe that disclosure to the SEC is necessary to prevent the company from engaging in conduct that is likely to cause substantial injury to the company or its investors;
  - they reasonably believe that the company is engaging in conduct that will impede an investigation of the misconduct;
  - at least 120 days have passed since the whistleblower made an internal report to the company OR 120 days have passed since they received the information at a time when the information was already known internally; or
  - otherwise ethically permissible (for attorneys)

Information Provided Voluntarily

- Information is provided ***voluntarily*** if it is provided *before* the SEC, Congress, or any other federal, state, or local authority, a self-regulatory organization, or the Public Company Accounting Oversight Board asks for it
- Certain information is not considered as provided "voluntarily" if the whistleblower is subject to a preexisting legal or contractual duty to report information on possible violations of the federal securities laws
- Any information provided subsequent to such a request will not be deemed "voluntary"

Original Information

- ***Original Information*** is information based upon the whistleblower's independent knowledge or independent analysis that is not already known to the SEC and not exclusively derived from an allegation in a judicial or administrative hearing; in a government report, hearing, audit, or investigation; or by the news media
  - **Independent knowledge:** can come from "experiences, communications and observations in your business or social interactions." It cannot come from public sources, although direct, first-hand knowledge is not necessary.
  - **Independent analysis:** is the "examination and evaluation of information that may be generally available, but which reveals information that is not generally known to the public." However, it can be based on the whistleblower's evaluation of publicly available sources.

Not Original Information – Use of the Privilege

- The Commission will not consider information to be derived from independent knowledge or independent analysis in the following circumstances:
  - If the whistleblower obtained the information through a communication that was subject to the attorney-client privilege
  - Unless disclosure of the information would be permitted by an attorney under the SEC's attorney conduct or state ethics rules, such as the crime fraud exception

Exception to Original Information – Confidential Information

- The Commission will not consider information to be derived from independent knowledge or independent analysis in the following circumstance:
  - If it is obtained by a means or in a manner that ***is determined by a United States court*** to violate applicable federal or state criminal law
- Confidentiality agreements cannot preclude whistleblowing

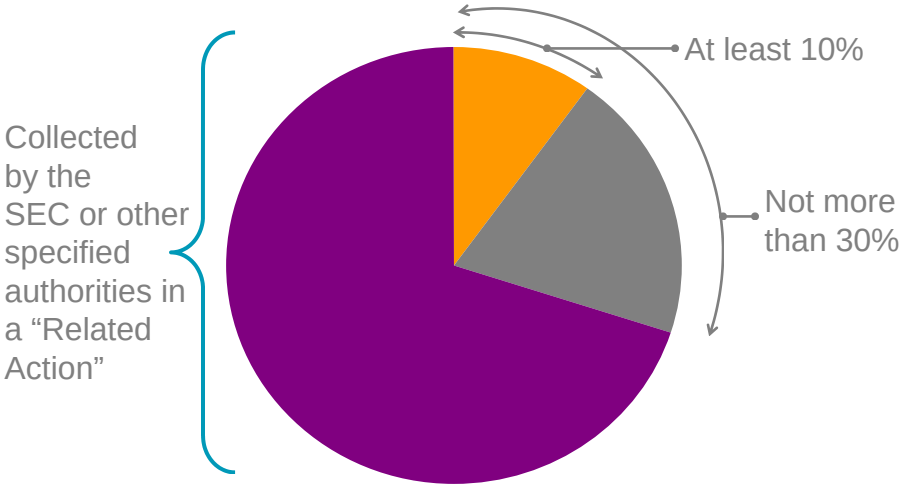
Leading to a Successful Enforcement Action

- Information will be considered as having led to a ***successful enforcement action*** if:
  - it caused the SEC to commence a new examination or investigation and significantly contributes to the success of a resulting enforcement action; or
  - the conduct was already under investigation when the information was submitted, but the information is essential to the success of the action and would not have otherwise been obtained.

Recovery and Rewards

- The reward to eligible whistleblowers is between 10 percent and 30 percent of the aggregate monetary sanctions obtained by the SEC and other U.S. governmental entities in any related actions
- Sanctions from the SEC federal court and administrative enforcement proceedings that arise from the same "nucleus of operative facts" can be aggregated to satisfy the $1M threshold
- The calculation of the monetary sanctions includes penalties, civil and criminal fines, disgorgement, and interest
- No amnesty, and whistleblowers will be liable for culpable conduct

Amount of Award



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Anti-Retaliation Provisions In New SEC Whistleblower Program

- ***Without supplanting the administrative procedure already in place under SOX***, the Dodd-Frank Act adds a new federal whistleblower retaliation cause of action for employees who provide information to the SEC about violations of the securities laws or who make SOX- or SEC-required disclosures
  - That cause of action looks nothing at all like an action under SOX and, importantly, has the potential to be much more lucrative to a claimant than would be available to a prevailing complainant under SOX, e.g.:
    - *Avoidance of SOX administrative proceedings*
    - *Avoidance of SOX's new 180-day limitations period*
    - *Increased monetary incentives for whistleblowers*
- That means that the would-be whistleblower will now have a choice whether to pursue his or her remedy via the Dodd-Frank Act's SEC Whistleblower Program, or via SOX, or both

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Protected Activity Under SEC-WP

- To be protected under the new SEC-WP, a whistleblower must:
  - ***Provide information to the Commission*** that the individual reasonably believes relates to a possible securities law violation;
  - Initiate, ***testify in, or assist in any investigation*** or judicial or administrative action of the SEC based upon or related to such information; or
  - Make ***disclosures*** "that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission."
- In commentary to the Final Rules, the SEC indicates its belief that the third prong of protected conduct "incorporate[s] the anti-retaliation protections specified in Section 806 of the Sarbanes-Oxley Act . . . ."

SEC-WP Retaliation Claims Are Filed Directly in Federal Court

- Unlike SOX claims, which must be filed with and investigated by OSHA, under the SEC-WP, retaliation complaints must be filed directly in federal court and prosecuted by the plaintiff
- Similarly, while Dodd-Frank is silent on the enforceability of arbitration agreements with respect to SEC-WP whistleblower claims, it expressly renders unenforceable any predispute arbitration agreement that requires arbitration of a SOX complaint, and precludes the waiver of any rights or remedies under SOX
- Also unlike SOX, SEC-WP does not provide an alleged whistleblower an opportunity to win a preliminary order of reinstatement while his or her complaint is being pursued
- SEC also states in commentary to Final Rules that it has enforcement authority over retaliation against SEC whistleblowers

Expanded Statute of Limitation for Retaliation Claims

- Under SOX, a whistleblower complaint must be filed within ***180 days*** after the date on which the violation occurs, or the date on which the employee becomes aware of a violation, a short filing window in comparison with a number of other federal statutes; until passage of Dodd-Frank, this limitations period was only 90 days
- Under Dodd-Frank, SEC-WP retaliation complaint may be filed within ***six years*** after the date on which the violation occurred or ***three years*** from the date when facts material to the complaint are known or reasonably should have been known by the complainant, provided that no complaint may be filed over 10 years after the violation

Enhanced Recovery for Retaliation Claims

- Under SOX, a prevailing employee is entitled to all relief necessary to make the employee whole, including reinstatement, back pay, and "compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees"
- Under SEC-WP, a prevailing plaintiff is entitled to reinstatement, ***twice*** the amount of back pay otherwise owed to the individual, interest, and attorney's fees and costs

Different Burden for Retaliation Claims?

- SOX only protects whistleblowers who "reasonably believe" the information they report relates to a "possible securities law violation that has occurred, is ongoing, or is about to occur"
- Dodd-Frank statute, however, was silent on the "reasonable belief" prong
- SEC Final Rules make clear that "an individual is a whistleblower if he possesses a reasonable belief that the information he is providing relates to a possible securities law violation… that has occurred, is ongoing, or is about to occur"

Waiver of SEC Anti-Retaliation Rights

- The SEC has stated in the commentary to the Final Rules that, in its view, "under Section 29(a) [of the Securities Exchange Act], employers may not require employees to waive or limit their anti-retaliation rights"

Dodd-Frank Amendments to SOX

SOX Expanded to Cover Subsidiaries

- Since the Sarbanes-Oxley Act's (SOX's) passage in 2002, the DOL has taken the position that employees of subsidiaries of public companies generally are not covered under the statute, at least absent a significant nexus between the management and employment relations of the parent company and a subsidiary
  - That position has not been popular – and Congress and other critics have taken aim at the DOL challenging its interpretation of SOX in this regard
- Dodd-Frank includes an amendment to SOX that adds to the definition of "publicly traded company" any "subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company"

Enhanced Statute of Limitations for SOX

- Dodd-Frank increases the time for alleged whistleblowers to file a complaint of retaliation with OSHA from 90 days of a violation to ***180 days*** of a violation, ***or 180 days after the date on which the employee became aware of the violation***

Waiver of SOX Claims

- Dodd-Frank includes the following provision with respect to waivers of SOX civil whistleblower claims:
  - "The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement"
- Can companies settle SOX claims prior to a filing with the DOL or court? See "Practical Implications"

Arbitration of SOX Claims

- The Dodd-Frank Act renders invalid or unenforceable any predispute arbitration agreement that requires arbitration of a SOX dispute
  - Broad wording: "No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section"
  - Does that mean that the *entire* arbitration agreement is invalid/unenforceable, or only the provisions relating to SOX claims?
  - What about the Form U-4 arbitration agreement?

Other Changes – SOX

- Dodd-Frank grants a right to a jury trial to SOX complainants in federal court (the private right of action extends to claimants who have not received a final decision from the Secretary of Labor within 180 days)
- Dodd-Frank also extends SOX coverage to nationally recognized statistical rating organizations

Other Dodd-Frank Whistleblower Programs

Other Changes – CFTC WP Program

- Dodd-Frank creates a new CFTC Whistleblower Program (CFTC WP):
  - Encourages reporting of violations of the Commodity Exchange Act to the CFTC
  - Provides monetary incentives similar to the SEC-WP
  - Provides a private right of action for retaliation in federal court
  - Similar to the amendment to SOX, the rights and remedies under the CFTC-WP provisions cannot be waived by agreement, policy, form, or condition of employment, or be subject to a predispute arbitration agreement

CFTC Rules

- The Dodd-Frank Act also creates a whistleblower program to report violations of the Commodity Exchange Act to the CFTC
  - Provides monetary incentive similar to the SEC program
  - Provides a private right of action for retaliation in federal court, similar to the SEC program
- CFTC's proposed rules are very similar to the SEC's proposed rules, with a few notable differences

CFTC Rules

- The SEC rules contain seven categories of information that will not be considered to derive from an individual's "independent knowledge" or "independent analysis," while the CFTC rules contain only four such categories
- The categories articulated by the SEC, but not by the CFTC, are when the whistleblower obtains information:
  - As a result of the legal representation of a client, and seeks to make a whistleblower submission for his or her own benefit;
  - Through the performance of an engagement required under the securities laws by an independent public accountant, if the information relates to a violation by the engagement client or its directors, officers, or other employees; or
  - From persons subject to the other exclusions

CFTC Rules

- Both agencies propose to exclude compliance, legal, audit, supervisory, and governance personnel from those considered to have "original information" when the information about a possible violation "was communicated to the person with the reasonable expectation that the person would take appropriate steps to cause the entity to respond to the violation"
- Both provide an exception to this disqualification when the entity delays in reporting the matter to the regulator or otherwise acts in bad faith
- The CFTC is very specific ("within 60 days")

CFTC Rules

- Both the SEC and CFTC disqualify as whistleblowers certain categories of public officials; the CFTC does it specifically by name, the SEC more by category
- It is clear that the SEC excludes foreign regulators; it does not appear that the CFTC does

Other Changes – Consumer Protection Whistleblowers

- Creates significant new protections for employees working in the consumer financial services sector
- Employers that offer or provide a consumer financial product or service; participate in designing, operating, or maintaining the consumer financial product or service; or process transactions related to consumer financial products or services are prohibited from terminating or otherwise discriminating against "any individual performing tasks related to the offering or provision of a consumer financial product or service" by reason of the fact that the individual engaged in protected conduct

Other Changes – Consumer Protection Whistleblowers

- Retaliation is prohibited where the employee:
  - Provided, caused to be provided, or is about to provide or cause to be provided information—whether at the initiative of the employee or ***in the ordinary course of the duties of the employee***—to the employer, the newly created Consumer Financial Protection Bureau; or any other local, state, or federal authority or agency relating to any violation of one of the laws protected by the Bureau or other rules promulgated by the Bureau
  - Testified or will testify in any proceeding resulting from the administration or enforcement of laws protected by the Bureau or rules promulgated by the Bureau
  - Filed or instituted (or caused to be filed or instituted) any proceeding under any federal consumer financial law
  - Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any law subject to the jurisdiction of the Bureau or enforced by the Bureau

Other Changes – Consumer Protection Whistleblowers

- A complainant may file a complaint with the DOL within 180 days of the alleged violation
- The DOL may issue a preliminary order of reinstatement that is not subject to stay pending appeal
- The complainant may seek de novo review in federal court if the DOL has not issued a final order within 210 days after the filing of the complaint (compared with the 180-day time period under SOX), or within 90 days of the initial written determination
- Similar to the amendments to SOX and the CFTC WP, the rights and remedies provided to whistleblowers under this section of the Wall Street Reform Act cannot be waived by any agreement, policy, form, or condition of employment, or be subject to a predispute arbitration agreement

Practical Implications and Recent Developments Relating to Dodd-Frank Whistleblower Programs

Practical Implications

- Reviewing waiver and arbitration agreements
  - Due to the restrictions on waivers and predispute arbitration agreements, employers need to review their employment agreements and policies, as well as their enforcement procedures to ensure they do not conflict with these restrictions
- Finding new ways to incentivize internal reporting
  - To compete with increased financial incentives to whistleblowers who provide original information to the SEC, employers need to consider how best to encourage would-be whistleblowers to raise compliance concerns internally to ensure that companies have the opportunity to investigate and correct any problems in a timely manner, which may reduce the risk of liability
- Possible race to the SEC
  - Consider preemptive reporting of issues to the SEC to eliminate the risk of employees who later seek to provide the same information to the SEC from being found to have reported "original information"

Practical Implications

- How do you settle SOX and SEC whistleblower retaliation claims in light of the statute's prohibition of waiver of SOX rights and remedies by "agreement," and prohibition in the commentary to the Final Rules on "waiv[ing] or limit[ing] [employee's] anti-retaliation rights under Section 21F"?
  - Consider filing with a court or the DOL – res judicata and/or DOL approval and order
  - Consider certifications/acknowledgments in the settlement papers relating to a lack of wrongdoing, reporting of wrongdoing, or retaliation
  - Consider agreements for resignation or mutual separation in the settlement papers

Practical Implications

(continued)

- Consider pros and cons of express SOX/SEC whistleblower waiver for those who have asserted, and settled, a SOX/SEC whistleblower claim before filing
- Consider pros and cons of a tender back requirement for consideration attributable to the settlement of an asserted SOX/SEC whistleblower claim if that claim is subsequently filed

Practical Implications

- Certifications/acknowledgments relating to a lack of wrongdoing or reporting of wrongdoing
  - Option One:
    - *"Employee is not aware of any facts that may constitute a violation of the Company's Code of Conduct and/or legal obligations, including the federal securities laws"*
  - Option Two:
    - *"Employee agrees that s/he has advised the Company of all facts of which s/he is aware that s/he believes may constitute a violation of the Company's Code of Conduct and/or legal obligations, including the federal securities laws, that the Company has resolved those issues to his/her satisfaction, that Employee is not aware of any current violations of the Company's Code of Conduct and/or legal obligations, including the federal securities laws, and that Employee has not suffered any adverse actions as a result of his/her conduct in this regard"*

Practical Implications

- Review coverage of subsidiaries
  - With SOX expanded to include subsidiaries or other related entities that are consolidated on a company's books, companies need to review their internal procedures and programs to make sure that employees of subsidiaries are covered

Recent Developments

- *Pezza v. Investors Capital Corp.*, 2011 U.S. Dist. LEXIS 20038 (D. Mass. Mar. 1, 2011) (amendment to SOX precluding predispute arbitration agreements applies to arbitration agreements entered into before the enactment of Dodd-Frank)

Recent Developments

- *Egan v. TradingScreen, Inc.*, 2011 WL 1672066 (S.D.N.Y. May 4, 2011)
  - First federal case to interpret the anti-retaliation provisions of § 922 of Dodd-Frank
  - Interpreted § 922 very broadly

Recent Developments

- Egan alleged that he provided information regarding corporate fraud to Latham & Watkins, a law firm hired by the Board of Directors
- Egan was fired, and sued for protection under the Dodd-Frank anti-retaliation provisions
  - Defendants argued that, because Egan did not report to the SEC, he was not a "whistleblower" under Dodd-Frank
  - Egan argued that he reported "jointly" with Latham
  - Egan further argued that reporting to the SEC was not required, because SEC WP protects reports that are themselves protected by SOX, the Securities and Exchange Act, 18 U.S.C. 1513(e), and any other statute under the SEC's jurisdiction

Recent Developments

- Court found that Dodd-Frank is internally contradictory:
  - It defines "whistleblower" as one who reports to the SEC
  - It also appears to protect whistleblower reports that are not required to be made to the SEC
- Court held that there is a narrow exception to the definition of "whistleblower" for disclosures "required or protected" under:
  - Sarbanes-Oxley;
  - The Securities and Exchange Act;
  - 18 U.S.C. 1513(e); or
  - Other laws subject to the SEC's jurisdiction
- Such reports are protected, even if they are not made to the SEC

Recent Developments

- Court held that, because Egan initiated the inquiry into the fraud, and because he provided information to Latham, he meets the definition of "whistleblower" by providing "jointly" – if Latham in fact reported to the SEC
  - Court further held that such an expansive definition does not apply to the bounty provision
- Court rejected Egan's claim that his reports were protected by SOX, 18 U.S.C. 1513(e), or FINRA rules
- Court required Egan to replead with facts showing that Latham did in fact report this malfeasance to the SEC
- The case is still being litigated

Recent Developments

- Implications of *Egan* as it currently stands:
  - Employers that investigate and report issues to the SEC that stem from a whistleblower report may unwittingly increase their exposure to an SEC whistleblower retaliation claim
  - Employees in a SOX matter could arguably bring their whistleblower retaliation claims under the SEC WP instead.

Recent Developments

- *Sylvester v. Parexel International LLC*, 2007-SOX-39, 2007-SOX-42 (ARB May 25, 2011)
  - En banc decision by the Obama administration's newly appointed Administrative Review Board (ARB)
  - Erodes employer-friendly precedents under SOX
  - "SOX claims are rarely suited for Rule 12 dismissals"
  - Complainants do not need to demonstrate that their complaints "definitively and specifically" relate to a SOX-enumerated violation
  - SOX complaints do not need to relate to shareholder fraud
    - *Complainants do not need to plead the elements of fraud to prove a reasonable belief of a SOX-enumerated violation*

The SEC's Intake of Tips, Complaints, and Referrals, and the Overall Impact on SEC Enforcement

The Rise of SEC Enforcement

- Fundamental reorganization of the SEC Enforcement Division & expansion of investigative tools
  - Five national specialized investigative units
    - *FCPA*
    - *Asset Management*
    - *Market Abuse*
    - *Structured Products*
    - *Municipal Securities and Public Pensions*
  - ***Also created the Office of Market Intelligence***
  - New cooperation tools
    - *Cooperation agreements*
    - *Deferred prosecution agreements*
    - *Nonprosecution agreements*

The Importance of Whistleblowers

- "While the SEC has a history of receiving a high volume of tips and complaints, the quality of the tips we have received has been better since Section 922 has become law."
  - *SEC Chairman Mary L. Schapiro, November 3, 2010*

SEC's Evaluation Process of Whistleblower Complaints

- Office of Market Intelligence (Director – Tom Sporkin)
  - New office of 40-50 persons created to collect, analyze, and monitor tips, complaints, and referrals
  - Works with market specialists and specialized units
  - Focuses on tips/complaints that are specific, credible, and timely
  - Review of daily report of 70-100 TCR
  - Receives 2-3 high-value tips/complaints per day
  - Best tips/complaints are referred to Division of Enforcement and appropriate investigative unit

SEC's Evaluation Process of Whistleblower Complaints

- Office of the Whistleblower (Director – Sean McKessy)
  - Reports to Office of Market Intelligence
  - Staff of 7 to take lead on complaint intake and claims process
  - Receives same TCR intake report as OMI
  - Prioritizes complaints of highest quality (specific, timely, credible)
  - Priority complaints to be referred to Division of Enforcement
  - Will work directly with whistleblowers
  - There is initial evidence of an uptick in high-quality, high-value complaints
  - Investor Protection Fund to pay awards, fully funded ($450M)
    - *Success of program to be judged by amount of money paid out*

SEC's Evaluation Process of Whistleblower Complaints

- Division of Enforcement
  - ***On case-by-case basis***, determines whether, and to what extent, to devote resources to further investigation
  - Priority system looks at the seriousness of the allegation, the quality of the information, the level of persons involved in the wrongdoing, and whether the harm to investors is ongoing or expected
  - May work directly with whistleblower
    - *Whistleblower subject to penalty for perjury*
  - May work directly with directors, officers, or employees of entity that has counsel where individual initiates contact first
    - *Confidentiality agreements may not preclude whistleblowing*
  - Whistleblower information obtained through attorney-client communication not considered to be "independent knowledge"

SEC's Evaluation Process of Whistleblower Complaints

- Division of Enforcement:
  - Company-Run Internal Investigations
    - *In appropriate cases will permit company to investigate matter and report back to Enforcement Staff*
    - *Employees learning about possible violations only through company's internal investigation ordinarily will not be considered whistleblowers*
    - *Staff will be looking for corporate cooperation*
  - However, anecdotal evidence suggests that serious matters or matters with high programmatic interest to Enforcement Staff will build the case away from the company
    - *Anecdotal evidence also suggests that Enforcement Staff will involve FBI and criminal authorities in whistleblower complaints and related investigations*

Impact on SEC Enforcement

- Enforcement Staff (Specialized Units) will bring more cases in position of strength; that is, with particular, credible, and strong inside corporate information
- Enforcement cases may move more quickly after Enforcement Staff contacts the company, where the staff is already armed with substantial information
- Enforcement Staff likely will call upon the company to "cooperate" in cases where evidence is not as strong

Impact on FCPA Investigations

FCPA: A DOJ Priority

- "[C]ombating corruption [is] one of the highest priorities" of DOJ. The targets of this enforcement effort are "bribe payers of all stripes: large corporations and small companies; powerful CEOs and low-level sales agents; U.S. companies and foreign issuers; citizens and foreign nationals; direct payers and intermediaries."
  - *Attorney General Holder addressing OECD in May 2010*

Dodd-Frank and the FCPA

- Likely to dramatically shape FCPA enforcement
  - Shift from historical reliance on self-reporting
  - More SEC-initiated investigations
- Employees encouraged, but not required, to report through an internal compliance program
- SEC authorized to share whistleblower-provided information with federal, state, and foreign enforcement authorities
- Awards based on SEC and “related actions” will sweep in DOJ as well as SEC sanctions
- Plaintiffs’ counsel actively recruiting whistleblowers

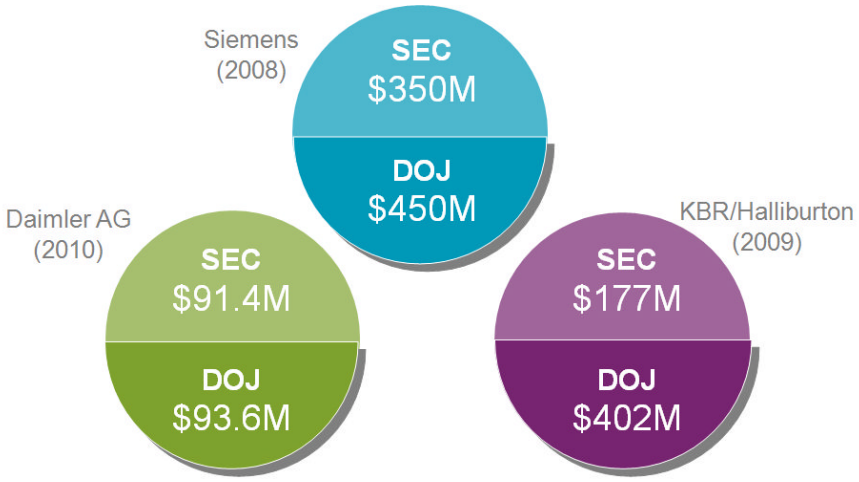
Dodd-Frank and the FCPA

- A "related action" is a judicial or administrative action brought by:
  - the ***Attorney General of the United States***, an appropriate regulatory authority, a self-regulatory organization, or a state attorney general in connection with any criminal investigation
  - that is based on ***the same original information*** that the whistleblower voluntarily provided to the SEC, and that led the SEC to obtain monetary sanctions totaling more than $1M.

FCPA Corporate Fines

- $25M criminal fine per violation or twice the gain/loss (Books & Records & Internal Control Violations)
- Up to $2M per violation or twice the gain/loss (Antibribery Violations)
- Disgorgement of gross gain
- Alternative Fines Statute, 18 U.S.C. § 3571(d)

Recent FCPA Fines/Recoveries



The Role of Whistleblower Counsel

- Dodd-Frank Act does not authorize qui tam actions, so potential whistleblowers need not establish a prima facie FCPA violation
- However, whistleblowers who report anonymously must be represented by counsel who must attest to the good faith basis of the claim
- Whistleblowers are not given immunity for their role in the reported conduct

Obtaining Corporate "Cooperation Credit" from the SEC in This New Environment

Cooperation Credit: Seaboard Report in Play

- Rules Release states:
  - "[W]e expect that in appropriate cases, consistent with the public interest and our obligation to preserve the confidentiality of a whistleblower, our staff will, upon receiving a whistleblower complaint, contact a company, describe the nature of the allegations, and ***give the company an opportunity to investigate the matter and report back***. . . . This has been the approach of the Enforcement staff in the past, and the Commission expects that it will continue in the future. Thus, in this respect, we do not expect our receipt of whistleblower complaints to minimize the importance of effective company processes for addressing allegations of wrongful conduct."
- Commission Report of Investigation Pursuant to section 21(a) of the Exchange Act and Statement on Corporate Cooperation (Seaboard) in play

Cooperation Credit

- Seaboard Report
  - In Seaboard, no action against company
    - *Timely reaction and remedial measures*
    - *Near-immediate self-report to Commission Staff*
    - *Full cooperation afforded Commission Staff*
- Enforcement Framework re Corporate Cooperation
  - Self-policing
  - Self-reporting
  - Remediation
  - Cooperation

Cooperation Credit

- Key cooperation factors within whistleblower context will be:
  - Timeliness of redress/response to alleged conduct
  - Commitment to learn truth
  - Timely self-reporting and cooperation
- Companies will need to react quickly
  - 120-day window
  - Not a race; Commission likely will credit corporate efforts where other Seaboard factors are present and there is a good-faith response even if whistleblower gets there first
    - *Strong self-policing and tone at the top will go a long way*
    - *Hearty internal compliance and whistleblower reporting and follow-up system is key*

The Decision to Self-Report

- A self-report is likely critical to receive maximum cooperation credit; however, the company must weigh pros/cons
- For example:
  - Establishes goodwill with Staff and provides certainty to process
  - Permits company to assist investigation and Staff to conserve time and resources
- On the other hand:
  - Staff likely will conduct at least some investigation regardless of merit given tough enforcement environment
  - Might validate otherwise-meritless complaints
  - Cannot go to the Enforcement Staff every time company receives a complaint

Benefits of Self-Reporting

- Maximum Cooperation Credit
- A company's reporting of a whistleblower's allegations to the SEC first (***or near in time to whistleblower***), or at least reporting them voluntarily, and explaining ***why*** those allegations are unfounded or unimportant may avoid or delay the institution of an investigation
- Even where an investigation ensues, cooperation credit may reduce charges/sanctions etc.
  - *Carter's Inc.* and *Tenaris S.A.* provide additional guidance
  - Commission may publicize good corporate behavior
- The Department of Justice also provides leniency in a potential criminal action if a company self-reports

Whether & When To Self-Report

Impact on Existing Compliance Programs

Components of an Effective Compliance Program Remain the Same

- Establish an effective code of ethics
- Designate specific high-level personnel with direct responsibility for overseeing compliance who have direct access to the CEO and board of directors
- Appoint a compliance officer with responsibility for independently investigating and acting on matters related to compliance
- Inform employees of the existence and details of the company's compliance program
- Arrange for regular reports to the board concerning internal investigations
- Establish effective methods of monitoring, auditing, or reporting on compliance, including, without limitation, establishing an anonymous hotline and providing protection for whistleblowers
- Implement systems to ensure reasonable steps to respond to or investigate reported violations
- Consistently enforce the company's policies and procedures through corrective action

Will Whistleblowers Go to Compliance…First?

- The Commission will consider that the whistleblower provided original information that led to successful enforcement if:
  - The original information was reported through compliance program procedures before or at the same time it was reported to the Commission.
  - The company later provided the results of an investigation initiated in whole or in part in response to the information the whistleblower reported.
  - The whistleblower also submitted the same information to the Commission within 120 days of providing it to the company.

Will Whistleblowers Go to Compliance…First?

- Criteria determining amount of award (10 percent to 30 percent):
  - Factors that may increase award:
    - *Significance of the information;*
    - *Assistance provided by the whistleblower;*
    - *Programmatic interest of the SEC; and*
    - ***Participation in internal compliance systems.***
  - Factors that may decrease award:
    - *Whistleblower culpability;*
    - *Unreasonable delay in reporting; and*
    - ***Interference with internal compliance and reporting systems.***

Will Whistleblowers Go to Compliance…First?

- Participation in internal compliance systems:
  - Whether, and the extent to which, a whistleblower reported through internal compliance procedures; and
  - Assisted any internal investigation
- Interference with internal compliance:
  - Whether the whistleblower knowingly interfered with compliance procedures;
  - Whether the whistleblower made any material false representations that hindered a company's efforts to detect, investigate, or remediate; and
  - Whether the whistleblower provided any false writing or document that hindered an entity's efforts to detect, investigate or remediate

Strengthen Internal Reporting Mechanisms

- Maintain an effective system for:
  - Providing advice on an urgent basis
  - Encouraging internal and, where possible, confidential reporting
  - Protecting those who report internally
  - Responding to requests and reports
- Consider anonymous hotlines and intranet portals
- Consider incentives for internal reporting
  - Performance and compensation reviews
  - BUT do not penalize for failure to internally report – anti-retaliation provisions

More and Better Internal Investigations

- Conduct prompt and effective internal investigation
  - Ensure adequate resources (legal, compliance, internal audit, outside counsel)
  - Take steps to maintain the attorney-client privilege
  - Determine the scope of the wrongdoing across employees, agents, business units
  - Determine whether conduct is ongoing

Lessons Learned from False Claims Act

- Understand and act on the unique risks posed by "whistleblower" complaints
- Treat "whistleblower" complaints differently
  - Not as an HR problem, but as a legal problem
  - Use the privilege
  - Conduct thorough and timely internal investigations
  - Be respectful of the "whistleblower"
- Take and document corrective action
- Thoroughly document all employment decisions
- Be proactive with "whistleblower's" counsel


international presence
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Princeton San Francisco Tokyo Washington DC Wilmington

TAB 2

Morgan Lewis

financial regulatory reform lawflash alert

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SEC's Final Rules for Implementing Dodd-Frank Whistleblower Provisions: Important Implications for Covered Entities

May 25, 2011

Today, the Securities and Exchange Commission (SEC or Commission) voted to approve final rules to implement the SEC whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted by Congress on July 21, 2010. The vote was split, with three Commissioners voting in favor of implementation and two voting against. According to the majority of the Commissioners, the final rules attempt to balance the tension between encouraging whistleblowers to come forward to the SEC while simultaneously discouraging them from bypassing internal company compliance programs. The dissenting Commissioners disagreed, taking the position that the failure to require mandatory internal reporting would have a detrimental effect on internal compliance and spur whistleblowers to bypass those internal mechanisms in favor of directly reporting to the SEC.

Whistleblowers Protected from Retaliation

A key component of the final rules is the definition of "whistleblower," which reflects the SEC's view that the antiretaliation protections of the Dodd-Frank Act do not depend on a finding of an ***actual*** violation of securities laws. The final rules provide that "[y]ou are a whistleblower if, alone or jointly with others, you provide the Commission . . . and the information relates to a ***possible*** violation of the federal securities laws (including any rules or regulations thereunder) that has occurred, is ongoing, or is about to occur" (emphasis added). This definition tracks the statutory definition, but adds the "possible violation" language, a standard that does not require an actual violation for the antiretaliation protections to apply. In its proposed rules, the SEC had included the phrase "potential violation"; it replaced that phrase with "possible violation" in the final rules.

However, the final rules also require that, to be afforded protection from retaliation, the whistleblower must possess a "***reasonable belief***" that the employer is violating the securities laws. The SEC has defined "reasonable belief" in three ways: (1) specific, credible, and timely information; (2) information related to a matter already under investigation by the SEC, but that makes a "significant contribution" to the investigation; or (3) information that was provided through the employer's internal compliance mechanisms, which is subsequently reported to the SEC by the employer, and which satisfies the first or second prong of the definition. This standard is a significant change from the proposed rules (which included no such requirement), and the final rules echo and cite to specific comments and proposals that Morgan Lewis submitted to the Commission on December 17, 2010.

Finally, the SEC makes clear that the antiretaliation provisions do not depend on whether the whistleblower ultimately qualifies for an award (see below). An otherwise-eligible whistleblower is protected from retaliation even if the award requirements are not met.

Rules Relating to Eligibility for an Award

To be considered for an award, the whistleblower must (1) voluntarily provide the SEC (2) with original information (3) that leads to the successful enforcement by the SEC of a federal court or administrative action (4) in which the SEC obtains monetary sanctions totaling more than $1 million.

The final rules provide that an individual whistleblower may be eligible for an award of 10% to 30% of the recovery, depending on a number of factors. This range reflects the SEC's attempt to balance competing interests: receiving high-quality information directly from whistleblowers and encouraging whistleblowers to utilize internal compliance procedures.

Reporting Through Internal Compliance Procedures

As an initial matter, a whistleblower *need not* report information through an employer's internal compliance procedures in order to be eligible for an award. This issue was left undecided under the proposed rules. In the final rules, however, the SEC has left the decision of whether to use internal compliance up to the individual whistleblower. This reflects the SEC's belief that whistleblowers will utilize robust internal compliance measures if they exist, despite having no requirement that they do so.

The SEC has set up financial incentives as a further effort to encourage the use of internal compliance measures. In determining the amount of an award, voluntary participation in corporate internal reporting programs can increase the reward, while interference with corporate internal reporting programs can decrease the reward. These incentives had not been included in the proposed rules.

Moreover, if any individual reports information to the company's internal compliance team or other similar department, the individual has 120 days from the original date of submission to report the information to the SEC. The individual will receive credit as if he or she had reported "original" information to the SEC on the date he or she disclosed it internally. This provision is also designed to promote internal compliance measures.

Similarly, the final rules provide that if a whistleblower reports information through the employer's internal compliance systems, and if the company subsequently self-reports to the SEC, the original whistleblower is credited with the report and any resulting award.

Original and Voluntary Information

Further, to obtain an award, the final rules require that the whistleblower come forward voluntarily. The SEC has defined "voluntarily" to exclude information provided pursuant to a subpoena, judicial order, demand from government authority or the Public Company Accounting Oversight Board, or pre-existing legal obligation (such as those of certain corporate officers).

The whistleblower must also provide "original information" to qualify for an award. "Original information" must be derived from the whistleblower's "independent knowledge or independent analysis."

The final rules exclude certain categories of information from the definition of "original information." For example, the SEC would not ***generally*** consider information obtained through an attorney-client privileged communication to be derived from independent knowledge or analysis. The carveout for attorneys reflects the SEC's concern that the monetary incentives of the SEC whistleblower program may deter companies from consulting with attorneys about potential securities laws violations.

The final rules also exclude any information gained through the performance of an engagement required under the securities laws by an independent public accountant if the information relates to a violation by the engagement client or its directors, officers, or other employees. This exception reflects the SEC's recognition of the role of independent public accountants and their pre-existing duty under securities laws to detect illegal acts.

The SEC also excludes from "original information" any information the whistleblower obtained as a person with legal, compliance, audit, supervisory, or governance responsibilities for an entity, such as an officer, director, or partner, if the information was communicated to the whistleblower through the company's internal compliance mechanisms. However, this exclusion is not absolute, and several exceptions allow such individuals to still be whistleblowers (e.g., if the person believes that disclosure is needed because the company is engaging in conduct likely to cause substantial injury to the financial interest or property of the entity or investors). Here, the SEC attempts to reconcile the tension between the potential bounty available to whistleblowers and its recognition that effective internal compliance programs can promote the goals of federal securities laws.

Misconduct and Aggregation

Finally, the final rules do not necessarily disqualify a whistleblower who has engaged in fraud or misconduct, even if it is the same fraud or misconduct the whistleblower is reporting. The degree and nature of the misconduct is simply a factor the SEC will consider in determining the award to a whistleblower.

In determining whether the $1 million in monetary sanctions threshold has been satisfied (a necessary precondition for award eligibility), the SEC will aggregate awards from separate proceedings if the proceedings were based on the same nucleus of operative facts.

Impact on FCPA Investigations

The whistleblower provisions of the Dodd-Frank Act will almost certainly result in a significant increase in the number of Foreign Corrupt Practices Act (FCPA) investigations initiated by current and former employees through allegations related to bribery of foreign officials. In recent years, some of the highest SEC recoveries have been in FCPA books and records cases, including, in recent months, settlements of $77 million, $137 million, and $218 million. Whistleblowers, who stand to obtain awards of 10% to 30% of those staggering amounts, will be highly incentivized to report allegations of the books and records provision of the FCPA, which the SEC enforces through civil enforcement proceedings.

Impact on Covered Entities

According to the SEC, through these final rules it has attempted to "incentivize" whistleblowers to use company internal compliance programs while simultaneously offering whistleblowers the right to contact the SEC directly. Although this compromise may dissuade some from reporting internally,

having robust internal mechanisms is still of utmost importance. In light of these rules, companies should undertake a thorough review of their internal compliance programs and assess their effectiveness. The quality of these programs may significantly impact whether (1) a whistleblower approaches the SEC in the first instance, or (2) the employee complains internally and waits to see how effectively the company handles the internal complaint. Further, the availability and quality of these programs will have a significant effect on whether the SEC decides to initiate an investigation, or whether it believes that the company has cured any problematic conduct such that no investigation or enforcement action is necessary.

It is too early to tell whether the final rules will lead to a flood of tips to the SEC that may lack depth and credibility, or if the rules will enhance the quality of information and enforcement. Since the passage of the Dodd-Frank Act, the SEC has reported that it has seen an increase in high-quality tips. It remains to be seen, however, whether increased publicity around whistleblower awards will have an adverse impact on the quality of the reports the SEC receives.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact the authors, **Sarah Bouchard** (215.963.5077; sbouchard@morganlewis.com) and **Thomas Linthorst** (609.919.6642; tlinthorst@morganlewis.com), or any of the following Morgan Lewis attorneys:

Washington, D.C.		
Amy Conway-Hatcher	202.739.5953	aconway-hatcher@morganlewis.com
Fred F. Fielding	202.739.5560	ffielding@morganlewis.com
Christian J. Mixter	202.739.5575	cmixter@morganlewis.com
Howard M. Radzely	202.739.5996	hradzely@morganlewis.com
Chicago		
Nina G. Stillman	312.324.1150	nstillman@morganlewis.com
Dallas		
Ann Marie Painter	214.466.4121	annmarie.painter@morganlewis.com
Los Angeles		
John F. Hartigan	213.612.2630	jhartigan@morganlewis.com
Irvine		
Carrie A. Gonell	949.399.7160	cgonell@morganlewis.com
New York		
Kelly A. Moore	212.309.6612	kelly.moore@morganlewis.com
Robert M. Romano	212.309.7083	rromano@morganlewis.com
Andrew J. Schaffran	212.309.6380	dschaffran@morganlewis.com
Samuel S. Shaulson	212.309.6718	sshaulson@morganlewis.com
Palo Alto		
Daryl S. Landy	650.843.7561	dlandy@morganlewis.com
Philadelphia		
Sarah E. Bouchard	215.963.5077	sbouchard@morganlewis.com

Joseph J. Costello	215.963.5295	jcostello@morganlewis.com
Eric Kraeutler	215.963.4840	ekraeutler@morganlewis.com
Dennis J. Morikawa	215.963.5513	dmorikawa@morganlewis.com
Eric W. Sitarchuk	215.963.5840	esitarchuk@morganlewis.com

Princeton

Thomas A. Linthorst	609.919.6642	tlinthorst@morganlewis.com

In addition, Morgan Lewis's multidisciplinary Financial Regulatory Reform resource team is available to assist with a wide range of issues and areas of concern related to the reform effort. You can access a complete collection of the firm's updates and alerts on the subject on our website's Financial Regulatory Reform page.

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

TAB 3

Morgan Lewis

foreign corrupt practices act alert

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Final Dodd-Frank Whistleblower Rules Do Not Mandate Internal Reporting; May Dramatically Reshape FCPA Enforcement

May 26, 2011

On May 25, 2011, a divided Securities and Exchange Commission (SEC) approved final rules to implement the SEC whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Because the SEC and the Department of Justice (DOJ) share responsibility for enforcing the Foreign Corrupt Practices Act (FCPA), the SEC's whistleblower program is likely to dramatically reshape FCPA enforcement which, to date, has been heavily dependent on voluntary self-reporting by companies.

Under the final rules, to be considered for an award, a whistleblower must voluntarily provide the SEC with original information that leads to the successful enforcement by the SEC of a federal court or administrative action in which the SEC obtains monetary sanctions totaling more than $1 million.

The whistleblower provisions almost certainly will result in a significant increase in the number of FCPA investigations initiated by current and former employees through allegations related to bribery of foreign officials. In recent years, some of the highest SEC recoveries have been in FCPA books and records cases, including, in recent months, settlements of $77 million, $137 million, and $218 million. Whistleblowers, who stand to obtain awards of 10% to 30% of those amounts, are protected against retaliation and will be highly incentivized to report allegations of the books and records provision of the FCPA, which the SEC enforces through civil enforcement proceedings.

Although many parties had urged the SEC to require potential whistleblowers to first report information through their companies' internal compliance programs, the SEC instead made changes to the final rule that would encourage—but not require—internal reporting.

Among other things, the final rules do the following:

- Make a whistleblower eligible for an award if the whistleblower reports internally and the company informs the SEC about the violations.
- Treat an employee as providing "original information" if the information is not already known to the SEC as of the date the employee reports internally, provided that the employee provides the same information to the SEC within 120 days. (The proposed rules provided for only a 90-day

grace period.) Thus, employees are able to report their information internally in the first instance, while preserving their "place in line" for a possible award from the SEC.

- Provide that a whistleblower's voluntary participation in an entity's internal compliance and reporting systems is a factor that can increase the amount of an award, and that a whistleblower's interference with internal compliance and reporting is a factor that can decrease the amount of an award.

In a change from the proposed rules, the final rules provide that sanctions from SEC federal court and administrative enforcement proceedings can be aggregated in determining whether the $1 million monetary sanctions threshold has been satisfied.

During the May 25 Commission hearing, Sean McKessy, the head of the SEC's Whistleblower Office, reported "an uptick, not a flood" of whistleblower reports since the SEC announced its program. McKessy also reported that the "quality" of whistleblower reports has increased.

The final rules serve to emphasize the importance to companies of implementing strong internal compliance programs that will detect and prevent potential FCPA violations, as well as promoting corporate cultures in which employees will value the opportunity to report internally in the first instance.

For more information regarding the impact of the Dodd-Frank Act's whistleblower provisions on FCPA enforcement, please see "The FCPA and Dodd-Frank Act" webinar presentation, available online at http://www.morganlewis.com/pubs/FCPAWebinar_Dodd-FrankAct_08march11.pdf.

For more information regarding the final rules, please see the May 25, 2011 Morgan Lewis LawFlash, "SEC's Final Rules for Implementing Dodd-Frank Whistleblower Provisions: Important Implications for Covered Entities," available online at http://www.morganlewis.com/pubs/FRR_LEPG_LF_SECFinalRulesForDodd-FrankWhistleblowerProvisions_25may11.pdf.

Morgan Lewis's White Collar Practice

Morgan Lewis's national and international White Collar Practice features dozens of former prosecutors and former high-level government officials whose experience representing companies and individuals covers a broad array of substantive white collar and government enforcement areas, including, among others:

- Antitrust
- Congressional investigations
- Environmental
- False Claims Act
- FCPA
- Financial fraud
- Healthcare fraud
- Industrial accidents and workplace safety
- Import/export regulations
- Money laundering
- Qui tam
- Securities fraud/SEC enforcement
- Tax

If you have any questions regarding this LawFlash, or require assistance with any issue relating to the defense of a government enforcement matter, please contact the authors, **Eric Kraeutler** (215.963.4840; ekraeutler@morganlewis.com), **Kelly Moore** (212.309.6612; kelly.moore@morganlewis.com), and **Alison Tanchyk** (215.963.5847; atanchyk@morganlewis.com), or any of our white collar practitioners:

New York		
Leslie R. Caldwell	212.309.6260	lcaldwell@morganlewis.com
Kelly A. Moore	212.309.6612	kelly.moore@morganlewis.com
Joanna C. Hendon	212.309.6377	jhendon@morganlewis.com
Philadelphia		
Eric W. Sitarchuk	215.963.5840	esitarchuk@morganlewis.com
John C. Dodds	215.963.4942	jdodds@morganlewis.com
Eric Kraeutler	215.963.4840	ekraeutler@morganlewis.com
Matthew J. Siembieda	215.963.4854	msiembieda@morganlewis.com
Lisa C. Dykstra	215.963.5699	ldykstra@morganlewis.com
Nathan J. Andrisani	215.963.5362	nandrisani@morganlewis.com
Meredith S. Auten	215.963.5860	mauten@morganlewis.com
Alison Tanchyk	215.963.5847	atanchyk@morganlewis.com
Washington, D.C.		
Fred F. Fielding	202.739.5560	ffielding@morganlewis.com
Mark E. Matthews	202.739.5655	mark.matthews@morganlewis.com
Amy J. Conway-Hatcher	202.739.5953	aconway-hatcher@morganlewis.com
Ronald J. Tenpas	202.739.5435	rtenpas@morganlewis.com
Kathleen McDermott	202.739.5458	kmcdermott@morganlewis.com
Scott A. Memmott	202.739.5098	smemmott@morganlewis.com
Los Angeles		
John F. Hartigan	213.612.2630	jhartigan@morganlewis.com
Wilmington		
Colm F. Connolly	302.574.7290	cconnolly@morganlewis.com
Frankfurt		
Jürgen Beninca	+49.69.714.007.19	jbeninca@morganlewis.com
London		
Iain Wright	+44 (0)20 3201 5630	iwright@morganlewis.com

In addition, Morgan Lewis's multidisciplinary Financial Regulatory Reform resource team is available to assist with a wide range of issues and areas of concern related to the reform effort. You can access a complete collection of the firm's updates and alerts on the subject on our website's Financial Regulatory Reform page.

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TAB 4

Morgan Lewis

practice areas

Litigation

Corporate Investigations & White Collar

Qui Tam

bar admissions

Pennsylvania

court admissions

U.S. Court of Appeals for the First Circuit

U.S. District Courts for the Eastern and Middle Districts of Pennsylvania

Meredith S. Auten

partner

Email: mauten@morganlewis.com

Philadelphia
1701 Market St.
Philadelphia, PA 19103-2921
Phone: 215.963.5860
Fax: 215.953.5001

Meredith S. Auten is a partner in Morgan Lewis's Litigation Practice and is a member of the Corporate Investigations and White Collar Practice. Ms. Auten concentrates her practice on the representation of corporations and individuals in all aspects of white collar litigation. A significant portion of her practice involves defending Civil False Claims Act/qui tam actions.

Ms. Auten has defended federal and state criminal and civil cases on behalf of corporations and individuals involving allegations of healthcare fraud, procurement fraud, theft of trade secrets/intellectual property violations, antitrust violations, tax fraud, bank fraud, securities fraud, and a variety of other offenses. Her practice also includes defending complex government investigations. Ms. Auten has been involved in a number of no-charge decisions involving Fortune 500 companies and individual professionals. She also has experience conducting internal investigations and regularly counsels clients on the development and oversight of compliance and ethics programs, with a particular focus in the healthcare field. Ms. Auten handles Civil False Claims Act/qui tam actions cases primarily in the pharmaceutical, healthcare and defense contracting industries.

Ms. Auten is a frequent lecturer and writer on white collar litigation topics, including the Civil False Claims Act and conducting internal investigations. She is a member of the American Bar Association Criminal Justice Section White Collar Crime Committee, the Pennsylvania Bar Association, the Philadelphia Bar Association, the American Health Lawyers Association, the Health Care Compliance Association, the National Association of Criminal Defense Lawyers White Collar Crime Committee, and the Pennsylvania Association of Criminal Defense Lawyers. Ms. Auten currently serves as the National Co-Chair of the ABA's Criminal Justice Section White Collar Committee Qui Tam Subcommittee and Mid-Atlantic Regional Subcommittee. Additionally, she is a former member of the Criminal Justice Appointment Panel for the U.S. District Court for the Eastern District of Pennsylvania. Ms. Auten currently serves as a hearing committee member of the Disciplinary Board of the Supreme Court of Pennsylvania.

Ms. Auten earned her J.D. from the University of Pennsylvania Law School in 1999 and her B.A., magna cum laude, in history and French from the University of Pennsylvania in 1996.

Ms. Auten is admitted to practice in Pennsylvania and before the U.S. Court of Appeals for the First Circuit and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania.

selected representations

Healthcare Fraud and Abuse:

- Representation of pharmaceutical clients in criminal and civil investigations and litigation of issues, including sales and marketing practices, off-label promotion, and Anti-Kickback Statute.
- Representation of a variety of hospitals, clinics and health care professionals in criminal and civil investigations and litigation of issues, including Anti-Kickback statute, Stark regulations, physician supervision, medical necessity, and billing practices.
- Administrative matters including Corporate Integrity Agreements (CIAs) and Compliance Certification Agreements (CCAs) involving the Department of Health and Human Services Office of Inspector General.
- Review and analysis of the Compliance Programs of a number of health care entities.
- Numerous internal investigations and voluntary disclosure of potential healthcare fraud and abuse issues.

False Claims Act Litigation:

- In healthcare matters, have defended a number of pharmaceutical companies, hospitals and integrated healthcare systems, among others.
- In government contract matters, have defended major defense contractors, aerospace manufacturers, and other suppliers of goods and services to the government.
- Represented numerous healthcare providers and government contractors in False Claims Act investigations where the government elected not to intervene or were otherwise declined without civil or criminal charges.

Government Contracts Fraud:

- Successfully defended government contractors in false claims investigations that were resolved without the filing of a civil complaint or criminal charges.
- Obtained declinations of prosecution for individuals under investigation or charged with government contracts fraud.
- Successful representation of a government contractor in an investigation of contracting by the Air Force Thunderbirds.
- Have handled suspension and debarment proceedings on behalf of defense contractors.

Miscellaneous:

FCPA:

- Conducted internal investigations of potential Foreign Corrupt Practices Act violations.
- Counseled clients on FCPA issues and FCPA compliance programs.

Antitrust:

- Declination of prosecution of a national newspaper and magazine distributor in connection with an investigation of alleged market allocation.
- Representation of clients in private civil treble damage and indirect

purchaser litigation alleging antitrust violations, including price fixing and market allocation.

Securities Fraud:

- Defense in the Enron investigation of a prominent Houston real estate agent who was involved in one of the first "off-the-books" Enron partnerships. Obtained immunity for the client and dismissal of the civil litigation against her.

Tax Fraud:

- Represented prominent real estate developers charged with federal payroll tax violations and tax evasion.

Business Frauds:

- Obtained successive federal appellate reversal of a conviction and sentence of accountant accused of mail, wire, and bank fraud.

honors + affiliations

National Co-Chair, Criminal Justice Section White Collar Committee Qui Tam Subcommittee, American Bar Association

National Co-Chair, Criminal Justice Section White Collar Committee Mid-Atlantic Regional Subcommittee, American Bar Association

Fellow, Litigation Counsel of America

Board of Directors, Union League of Philadelphia

Member, Philadelphia City Institute

Past President, Penn Association of Alumnae

Past member, Penn Alumni Board of Directors

Member, Trustees Council of Penn Women

Listed, Pennsylvania Rising Star Super Lawyer, *Law & Politics Magazine* and *Philadelphia Magazine*

Recipient, Multiple Sclerosis Society Leadership Award (2004)

education

University of Pennsylvania Law School, 1999, J.D.

University of Pennsylvania, 1996, B.A., Magna Cum Laude

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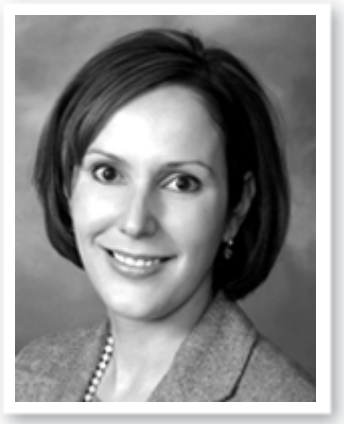


practice areas

Labor & Employment

Complex Employment Litigation

Employment Counseling & Litigation

FLSA/Wage & Hour

Noncompetition Agreements & Trade Secrets

Retail

bar admissions

Pennsylvania

New Jersey

court admissions

U.S. District Court for the Eastern District of Pennsylvania

U.S. District Court for the Western District of Michigan

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Seventh Circuit

Sarah E. Bouchard

partner

Email: sbouchard@morganlewis.com

Philadelphia
1701 Market St.
Philadelphia, PA 19103-2921
Phone: 215.963.5077
Fax: 215.963.5001

Sarah E. Bouchard is a partner in Morgan Lewis's Labor and Employment Practice and a co-leader of the Sarbanes-Oxley subpractice. Ms. Bouchard has litigated employment and benefits issues in state and federal courts, and has provided representation and advice on wrongful discharge, employment contracts, sexual harassment, discrimination, whistleblower/Sarbanes-Oxley actions, severance agreements, noncompetition and trade secret protections, reductions in force, and a variety of other employment matters.

Ms. Bouchard is a seasoned litigator and has led the defense of nationwide class and collective actions for some of the firm's largest and most sophisticated clients, particularly in the areas of financial services, healthcare, and retail. She has handled sensitive Sarbanes-Oxley-related litigation at all levels of the administrative and federal process, and she speaks extensively on Sarbanes-Oxley issues. She has also handled complex noncompetition and trade secret litigations. Ms. Bouchard is listed in *Chambers* as one of *America's Leading Lawyers for Business* (2008–2011).

Ms. Bouchard also routinely advises employers, conducts training, as well as conducts internal audits on many areas of labor and employment law, including sexual harassment; employee leave rights; wage and hour compliance; and litigation avoidance.

Ms. Bouchard's publications on labor and employment law include articles in the *Villanova Law Review* and the *Texas Review of Litigation*. Most recently, she authored a chapter on "Establishing Best Practices" in *Inside the Minds: Labor and Employment Litigation Strategies: Leading Lawyers on Determining Defense and Negotiation Strategies, Evaluating Financial Repercussions, and Interpreting Federal and State Laws* (Aspatore Books, 2007). Ms. Bouchard served as a member of the 2009 *EmploymentLaw360* editorial advisory board and has been a frequently quoted employment law expert on whistleblower issues.

Ms. Bouchard has a deep commitment to education, particularly urban education and diversity initiatives. She serves several education clients in her practice, including Teach for America, and is a board member of Young Scholars Academy. Ms. Bouchard also serves as Morgan Lewis's inaugural Legal Fellow for the Leadership Counsel on Legal Diversity. From 2003 to 2007, Ms. Bouchard served as adjunct faculty for Villanova University's Human Resources Department Graduate Program.

Ms. Bouchard earned her J.D. from Villanova University School of Law in 1995. She received her B.A., Phi Beta Kappa, from Pennsylvania State University in 1992.

Ms. Bouchard is admitted to practice in Pennsylvania and New Jersey and before the U.S. District Court for the Eastern District of Pennsylvania, the U.S. District Court for the Western District of Michigan, and the U.S. Courts of Appeals for the Second, Third Circuit, and Seventh Circuits.

practice accolades

Labor & Employment

The American Lawyer Magazine's Litigation Department of the Year - Labor and Employment Law Finalist 2004, Winner 2006, Finalist 2008, and Finalist 2010

Listed in the highest tier for National Labor and Employment Practice in *Chambers USA 2010*

Ranked in the top tier by *The Legal 500* for Labor and Employment Litigation, ERISA Litigation, Labor-Management Relations, and Workplace and Employment Counseling (2010)

Ranked, National Tier 1: Employment Law - Management, *U.S. News* and *Best Lawyers* (2010)

Named one of *Law360*'s Employment Groups of the Year (2010)

Ranked #1 for "Most Prestigious" Labor and Employment Practice, Vault 2008 Associate Survey

honors + affiliations

Listed, *Chambers USA: America's Leading Lawyers for Business* (2008–2011)

education

Villanova University School of Law, 1995, J.D.

Pennsylvania State University, 1992, B.A.

Morgan Lewis

practice areas

Litigation

Corporate Investigations & White Collar

Securities Litigation & Enforcement

Foreign Corrupt Practices Act (FCPA)

Environmental Crimes

Antitrust

bar admissions

New York

Leslie R. Caldwell

partner

Email: lcaldwell@morganlewis.com

New York
101 Park Avenue
New York, NY 10178-0060
Phone: 212.309.6260
Fax: 212.309.6001

Leslie R. Caldwell is a partner in Morgan Lewis's Litigation Practice. Her practice concentrates on internal investigations and defense of companies and individuals accused by the government of involvement in white collar crime, SEC or other regulatory violations, and other crises. She leads a national Morgan Lewis team that includes 17 former prosecutors with experience in major white collar matters across a wide range of industries. Ms. Caldwell is based in New York.

Ms. Caldwell is a trial lawyer who previously served in the U.S. Department of Justice. Most recently, she was selected by the Department to serve as leader of the special task force that was created to investigate the collapse of the Enron Corporation. As director of the Enron Task Force from 2002 until 2004, she oversaw all aspects of the complex investigation, which resulted in the prosecution of more than 30 individuals.

From 1999-2002, Ms. Caldwell served in the U.S. Attorney's Office for the Northern District of California, where she was chief of both the Criminal Division and the Securities Fraud Section. Previously, Ms. Caldwell was an assistant U.S. attorney in the Eastern District of New York, where she successfully tried more than 30 cases, including several high-profile racketeering prosecutions, and argued more than 30 appeals before the U.S. Court of Appeals for the Second Circuit.

Ms. Caldwell is a frequent speaker on white collar issues and has spoken at NYU Law School, UC Berkeley School of Law, Georgetown University Law School, Wharton School, Columbia Business School, and Yale School of Management, to highlight a few. She also is a featured speaker at many industry, bar association, and professional conferences on the subject of white collar crime.

Ms. Caldwell's recent representations include:

- Successful defense of a Fortune 500 company in a federal criminal tax investigation
- The audit committee of a Fortune 500 company in connection with an accounting fraud investigation; closed without action by SEC and DOJ
- Successful defense of a Fortune 100 company in an FTC investigation
- A Fortune 500 company in connection with a multijurisdiction FCPA investigation
- Fortune 500 and other issuers, audit committees, board members, and executives in connection with parallel DOJ and SEC options timing investigations

- Successful defense of a European pharmaceutical manufacturer in a DOJ investigation into drug marketing practices
- A special committee of a biotechnology company in connection with an FDA investigation
- A major media company in connection with grand jury subpoenas served on a newspaper and its reporters
- Successful defense of the CEO of a Fortune 500 company in connection with an FCPA investigation
- Successful defense of the CEO of a major pharmaceutical wholesaler in connection with a criminal accounting fraud investigation
- Negotiated favorable resolution for the former general counsel of Monster Worldwide in a securities fraud prosecution in the Southern District of New York
- Successful defense of the CEO of a reinsurance company in connection with a criminal accounting inquiry
- Successful defense of the CEO of an insurance broker in connection with an embezzlement inquiry
- Advised a Fortune 500 company on FCPA issues in advance of a major acquisition

Ms. Caldwell has engaged in significant pro bono work as a participant in the Darfur Project, an advocacy training program for Sudanese human rights lawyers. This project, sponsored by the American Bar Association and the MacArthur Foundation, is designed to assist the Sudanese lawyers in representing victims of Darfur atrocities.

Ms. Caldwell is admitted to practice in New York.

honors + affiliations

National Law Journal's "50 Most Influential Women Lawyers in America" (2007)

Attorney General's Award for Exceptional Service as Director of Enron Task Force

Attorney General's John Marshall Award for Trial of Litigation

Attorney General's Award for Fraud Prevention

Henry L. Stimson Medal, awarded by Association of the Bar of the City of New York

Multiple Department of Justice Awards for Superior Performance

Member, Ethics Committee of the Board of Directors of the U.S. Olympic Committee

education

George Washington University Law School, 1982, J.D., Articles Editor, *George Washington Law Review*

Pennsylvania State University, 1979, B.A. (Economics), Summa Cum Laude, Phi Beta Kappa

Morgan Lewis

practice areas

Litigation

Securities Litigation & Enforcement

U.S. Supreme Court and Appellate Litigation

Corporate Investigations & White Collar

Hospitality

Commercial Litigation

Environmental Crimes

bar admissions

District of Columbia

Georgia

Patrick D. Conner

partner

Email: pconner@morganlewis.com

Washington, D.C.
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
Phone: 202.739.5594
Fax: 202.739.3001

Patrick D. Conner is a partner in Morgan Lewis's Litigation Practice. Mr. Conner's practice is concentrated in complex business and commercial litigation in federal and state courts, with a particular focus on litigation in the global financial services arena. He represents major corporations, global financial institutions, and their officers and directors in a wide variety of litigation matters. These matters include shareholder class actions, derivative suits, arbitrations, mediations, and investigations conducted by the U.S. Department of Justice, U.S. Securities and Exchange Commission, the U.S. Office of Foreign Assets Control, self-regulatory organizations, and various state securities regulators.

In recent years, Mr. Conner has represented investment advisers in the market timing investigations conducted by various regulators in the mutual fund industry, and he has conducted internal investigations into the backdating of stock options in publicly traded companies. Mr. Conner also has counseled clients on a variety of complex commercial litigation matters, including accountant and lender liability claims, commercial contract disputes, and business torts.

Mr. Conner received his J.D., cum laude, from the University of Georgia School of Law in 1998. While in law school, Mr. Conner was a national finalist in the ABA and National Moot Court Competitions, and he also was named to the Lumpkin Inn of Court and the Order of Barristers. He received his B.A., cum laude, from the University of Georgia in 1995 and attended Trinity College in Dublin, Ireland.

Mr. Conner is admitted to practice in the District of Columbia and Georgia.

honors + affiliations

Member, American Bar Association, Moot Court Competition Team

Member, National Moot Court Competition Teams, University of Georgia Law School

Member, Lumpkin Inns of Court and the Order of Barristers

Member, District of Columbia Bar Association

education

University of Georgia School of Law, 1998, J.D., Cum Laude

University of Georgia, 1995, B.A., Cum Laude

Morgan Lewis

Anne C. Flannery

partner

Email: aflannery@morganlewis.com

New York
101 Park Avenue
New York, NY 10178-0060
Phone: 212.309.6370
Fax: 212.309.6001

Anne C. Flannery is a partner in Morgan Lewis's Litigation Practice. Her practice focuses on a variety of securities enforcement and litigation matters, including investigations by the U.S. Securities and Exchange Commission (SEC), FINRA and state securities regulators for potential securities fraud, trading and sales practice violations and related supervisory issues.

Ms. Flannery has handled numerous complex matters on behalf of financial institutions, public companies, and individuals in investigations and litigation with securities regulators, including contested hearings and appeals. Ms. Flannery also has extensive experience in conducting internal investigations, counseling broker-dealers on regulatory and compliance issues, acting as an independent consultant to firms and representing clients in general federal civil litigation and white-collar criminal defense matters relating to securities issues.

Ms. Flannery originally joined Morgan Lewis in October 1987 after a successful career as a senior official in the SEC 's Washington, D.C. and New York offices. As a Morgan Lewis partner in the firm's securities practice, she achieved significant success for clients, while also serving on the Governing Board of the firm for several years. In 1999, Ms. Flannery left Morgan Lewis to join Merrill Lynch's Office of General Counsel. At Merrill, she held several senior positions, including First Vice President and General Counsel for Global Regulatory Affairs. During part of her tenure at Merrill Lynch, Ms. Flannery also served as the global head of compliance.

Ms. Flannery writes and lectures frequently on regulatory and enforcement issues. She is co-chair of the SRO Subcommittee of the ABA Litigation Section Securities Committee, former co-chair of the ABA Securities Litigation Committee, a former member of the NYSE Legal Advisory Committee, the NASD Membership Committee, and the SIA Compliance and Legal Division Executive Committee. While at the SEC, she was a recipient of both the Irving M. Pollack Award and a Distinguished Senior Executive Service Award.

Ms. Flannery is a cum laude graduate of both Brooklyn Law School and Marymount Manhattan College. She is a past chair and current trustee of the Board of Trustees for Marymount Manhattan College.

Ms. Flannery is admitted to practice in New York.

practice areas

Litigation
Broker-Dealers
Securities Regulation
Investment Management
Anti-Money Laundering
Securities Litigation & Enforcement
Foreign Corrupt Practices Act (FCPA)
Broker-Dealer & Capital Markets Regulation
Exchange Traded Funds

bar admissions

New York

honors + affiliations

Listed, *Chambers USA: America's Leading Lawyers for Business* (2009–2011)

Co-Chair, SRO Subcommittee, ABA Litigation Section Securities Committee

Former Co-Chair, ABA Litigation Section Securities Litigation Committee
Former Member, NYSE Legal Advisory Committee
Former Member, NASD Membership Committee
Former Member, SIA Compliance and Legal Division Executive Committee
Recipient, SEC Irving M. Pollack Award
Recipient, SEC Distinguished Senior Executive Service Award

education

Brooklyn Law School, 1976, J.D., Cum Laude
Marymount Manhattan College, 1973, B.A., Cum Laude

Morgan Lewis

practice areas

Litigation

Corporate Investigations & White Collar

Securities Litigation & Enforcement

bar admissions

New York

Joanna C. Hendon

partner

Email: jhendon@morganlewis.com

New York
101 Park Avenue
New York, NY 10178-0060
Phone: 212.309.6377
Fax: 212.309.6001

Joanna C. Hendon is a partner in Morgan Lewis's Litigation Practice. Ms. Hendon's practice focuses on white collar criminal matters, regulatory enforcement actions, and complex civil litigation.

Ms. Hendon represents corporations and individuals in investigations and prosecutions by the U.S. Department of Justice, the SEC, local prosecutors, and state Attorneys General. She has represented clients in cases involving allegations of insider trading, false or misleading corporate disclosures and other violations of the securities laws, antitrust violations, conflicts of interest, perjury, bribery, obstruction, tax fraud, money laundering, and violations of the Foreign Corrupt Practices Act (FCPA). Ms. Hendon also has extensive civil litigation experience.

Prior to joining Morgan Lewis, Ms. Hendon was in-house counsel at Merrill Lynch & Co., where she was responsible for all white collar and significant civil enforcement matters for the firm. Ms. Hendon regularly appeared before the U.S. Department of Justice, local prosecutors, the SEC, FINRA, and the New York State Attorney General (NYAG) in matters affecting the firm's investment banking, lending, sales and trading, and broker-dealer businesses. She also prepared witnesses to testify before Congress and conducted numerous internal investigations. Among other matters, Ms. Hendon was responsible for inquiries concerning the firm's origination and sale of subprime mortgage–backed securities and auction rate securities and allegations of bid rigging in the municipal finance industry.

Before working in-house, Ms. Hendon was in private practice and an Assistant United States Attorney (AUSA) for the Southern District of New York. As an AUSA, Ms. Hendon was a member of the Southern District's Securities & Commodities Fraud Task Force, where she was the lead prosecutor in numerous jury trials and complex investigations. In 2000, Ms. Hendon received the U.S. Attorney General's John Marshall Award for Outstanding Legal Achievement for Trial of Litigation, the Department of Justice's highest honor for the trial of a case.

In private practice, Ms. Hendon represented corporate clients and individuals in complex civil litigation and white collar and regulatory matters. Representative criminal and regulatory matters include:

- The defense of an oil company in an FCPA investigation in the Southern District of New York.
- The defense of the national sales force of a pharmaceutical company in a Department of Justice inquiry and related civil litigation concerning the marketing of a popular drug.
- The defense of the former ImClone CEO in an insider trading, perjury, and obstruction prosecution by the Southern District of New

York.

- The defense of an investment bank in a criminal investigation in the Southern District of New York concerning tax shelters.
- The defense of a CFO of an insurance company in securities fraud investigations by the Southern District of New York and the SEC.
- The defense of the head of operations of an investment bank in SEC, NYSE, and NYAG investigations concerning market timing and the late trading of mutual fund securities.

Recent civil representations include the defense at trial of a public company in a billion-dollar breach of contract claim, the defense of an investment bank in a securities class action and related bankruptcy and multidistrict litigation following the collapse of Enron and Worldcom, and the defense of prominent law firms in malpractice and securities class actions.

After completing law school, Ms. Hendon served as a law clerk to Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit. She received her J.D. from Yale Law School in 1991, where she was notes editor for the *Yale Law Journal*, and her B.A. (Hon.) in English from the University of British Columbia in 1987, where she was the valedictorian of the Faculty of Arts. Ms. Hendon is currently an adjunct professor at Fordham Law School, where she teaches a course in insider trading and other securities fraud issues.

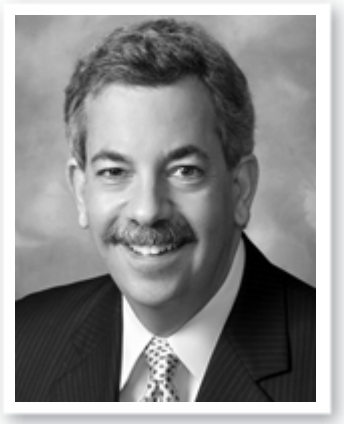
Ms. Hendon is admitted to practice in New York.

education

Yale Law School, 1991, J.D.

University of British Columbia, 1987, B.A. (Hon.)

Morgan Lewis



practice areas

Litigation

Commercial Litigation

IP Litigation

Intellectual Property

Corporate Investigations & White Collar

Foreign Corrupt Practices Act (FCPA)

International Arbitration & Litigation

bar admissions

Pennsylvania

Eric Kraeutler

partner

Email: ekraeutler@morganlewis.com

Philadelphia
1701 Market St.
Philadelphia, PA 19103-2921
Phone: 215.963.4840
Fax: 215.963.5001

Eric Kraeutler is the leader of Morgan Lewis's Philadelphia Litigation Practice. His practice focuses on trials and appeals involving complex commercial, intellectual property, and white collar criminal matters. Mr. Kraeutler has been the lead trial lawyer in civil and criminal jury trials, civil bench trials, and arbitrations, including international arbitrations. He also has appellate experience, having argued numerous cases before the U.S. Courts of Appeals for the Third, Ninth, and Federal Circuits, as well as state appellate courts.

Mr. Kraeutler's civil litigation practice has focused on intellectual property disputes, commercial disputes, and litigation relating to government investigations. He has handled patent, trademark, and trade secret cases in courts throughout the United States. In addition, Mr. Kraeutler has a broad background in government investigations, internal investigations, and white collar criminal defense. He has handled matters involving the Foreign Corrupt Practices Act, exports and embargoes, the Economic Espionage Act, political corruption, environmental crimes, and workplace safety. In addition to his litigation practice, Mr. Kraeutler regularly counsels clients regarding corporate compliance and risk management issues.

Mr. Kraeutler is listed in the 2008 through 2011 editions of *The Best Lawyers in America*; is profiled in the 2007 and 2008 editions of *The Legal 500*; and is profiled in *Who's Who in America*, *Who's Who in the World*, and *Who's Who in American Law*.

Mr. Kraeutler has served for many years as Morgan Lewis's firmwide hiring partner. As such, he oversees the attorney recruiting operations for all of the firm's domestic offices. Mr. Kraeutler is also a member of the firm's Advisory Board, Legal Personnel Committee, and Diversity Committee.

Active in community affairs, Mr. Kraeutler is a board member of the Committee of Seventy (the Philadelphia region's preeminent political watchdog organization); a board member of Back on My Feet (promoting self-sufficiency of homeless populations through structured running programs); a board member of The Chester Fund (supporting the Chester-Upland School of the Arts); and the former chairman of the National Multiple Sclerosis Society, Greater Delaware Valley Chapter.

Mr. Kraeutler began his association with Morgan Lewis in 1980 and rejoined the firm in 1987, after spending three years as a federal prosecutor. Between 1984 and 1987, Mr. Kraeutler served in the Criminal Division of the U.S. Attorney's Office for the Eastern District of Pennsylvania, where he concentrated in the investigation and prosecution of complex business crimes. In the 1990s, as a Special Pennsylvania Deputy Attorney General, Mr. Kraeutler oversaw the indictment of Pennsylvania Supreme Court Justice Rolf Larsen and testified at the historic impeachment trial of Justice

Larsen before the Pennsylvania Senate.

Mr. Kraeutler is admitted to practice in Pennsylvania. He is not admitted in Delaware.

honors + affiliations

Former Chairman, National Multiple Sclerosis Society, Greater Delaware Valley Chapter

Board Member, Committee of 70 (the Philadelphia region's preeminent political watchdog organization)

Emeritus Trustee, Princeton Tower Club

Awarded the Norman Cohn Hope Award by the National Multiple Sclerosis Society (the highest honor given to volunteers by the Society for service on behalf of persons with multiple sclerosis and their families)

Listed, *The Best Lawyers in America* (2008–2011)

Listed, *U.S. Legal 500 Volume 2: Intellectual Property, Media, Technology and Telecoms* (2007 & 2008)

education

University of Virginia School of Law, 1980, J.D.

Princeton University, 1976, B.A.

Morgan Lewis

practice areas

Labor & Employment

Complex Employment Litigation

Employment Counseling & Litigation

Noncompetition Agreements & Trade Secrets

Life Sciences

Financial Services

Securities Industry

Privacy

bar admissions

New Jersey

New York

California

Thomas A. Linthorst

partner

Email: tlinthorst@morganlewis.com

Princeton
502 Carnegie Center
Princeton, NJ 08540-6289
Phone: 609.919.6642
Fax: 609.919.6701

Thomas A. Linthorst is a partner in the Labor and Employment Practice. Mr. Linthorst represents employers in a broad array of labor and employment law matters.

Mr. Linthorst represents employers before state and federal trial and appellate courts and administrative agencies. His practice is concentrated in defending employers against wage and hour class and collective actions, whistleblower claims, and claims for wrongful termination, sexual harassment, discrimination, and retaliation.

Mr. Linthorst is a co-Leader of the Labor and Employment Practice Group's Wage and Hour Practice, Sarbanes-Oxley and Dodd-Frank Whistleblower Practice, and Life Sciences Industry Initiative.

- *Wage and Hour Litigation:* Mr. Linthorst has served as lead counsel in numerous wage and hour class and collective actions, including misclassification and off-the-clock cases, and has been successful in defeating class and collective action certification, and prevailing on the merits.
- *Whistleblowers:* Mr. Linthorst regularly counsels employers on whistleblower issues, and defends whistleblower claims before the Department of Labor and in the courts.
- *Restrictive Covenants and Trade Secrets:* Mr. Linthorst regularly counsel's employers on restrictive covenant drafting and enforcement, and litigates claims relating to breach of restrictive covenants and misappropriation of trade secrets.
- *Other Employment Litigation and Counseling:* Mr. Linthorst represents employers of all sizes on full range of labor and employment law matters, including issues under Title VII, ADA, FMLA, ADEA, OWBPA, FLSA, WARN, ERISA, NLRA, and state law causes of action; Mr. Linthorst also regularly advises employers on individual and group termination decisions, leaves of absence, accommodating disabilities, workplace privacy, and a wide range of employment agreements.
- *Speaker/author:* Speaker and/or author on issues relating to overtime and other wage and hour issues, whistleblowers, leaves of absence, workplace privacy issues relating to e-mail and internet use, and trade secrets.

Mr. Linthorst is admitted to practice in New Jersey, New York, and California.

practice accolades

Labor & Employment

The American Lawyer Magazine's Litigation Department of the Year - Labor and Employment Law Finalist 2004, Winner 2006, Finalist 2008, and Finalist 2010

Listed in the highest tier for National Labor and Employment Practice in *Chambers USA 2010*

Ranked in the top tier by *The Legal 500* for Labor and Employment Litigation, ERISA Litigation, Labor-Management Relations, and Workplace and Employment Counseling (2010)

Ranked, National Tier 1: Employment Law - Management, *U.S. News* and *Best Lawyers* (2010)

Named one of *Law360*'s Employment Groups of the Year (2010)

Ranked #1 for "Most Prestigious" Labor and Employment Practice, Vault 2008 Associate Survey

honors + affiliations

Listed, *New Jersey Law Journal*'s "40 Under 40" (2008)

Listed, "Rising Stars," *New Jersey Super Lawyers* (2006-2008)

education

George Washington University National Law Center, 1995, J.D.

University of California, Los Angeles, 1992, B.A.

Morgan Lewis

Eric Meckley

partner-elect

Email: emeckley@morganlewis.com

San Francisco
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Phone: 415.442.1013
Fax: 415.442.1001

Eric Meckley is partner-elect in Morgan Lewis's Labor and Employment Practice. Mr. Meckley focuses his practice on employment litigation in federal and state courts, in arbitration, and before various state and federal administrative agencies. Mr. Meckley represents employers in a broad range of employment matters, including California and FLSA wage-and-hour class and collective actions; discrimination, harassment, retaliation, failure to provide reasonable accommodation and other employment-related claims; and non-competition/employee raiding/trade secret issues.

Mr. Meckley has tried cases to verdict before juries, judges, and arbitrators. He has successfully fought and defeated class certification in several wage and hour lawsuits. He has also filed and won numerous motions for summary judgment in state and federal court and in arbitration. In addition to his litigation experience, Mr. Meckley regularly advises clients on California and federal employment laws and in connection with wage-and-hour compliance and audits.

Mr. Meckley earned his J.D. from the University of California at Berkeley School of Law, Boalt Hall in 1993 where he received several American Jurisprudence awards. He earned his B.A., Phi Beta Kappa, from Pennsylvania State University in 1990.

Mr. Meckley is admitted to practice in California and before the U.S. District Courts for the Northern, Eastern, and Central Districts of California, the U.S. District Court for the District of Colorado, and the U.S. Court of Appeals for the Ninth Circuit.

practice areas

Labor & Employment
FLSA/Wage & Hour
Complex Employment Litigation
California Wage & Hour
California Employment Counseling
Noncompetition Agreements & Trade Secrets
Employment Counseling & Litigation

bar admissions

California

practice accolades

Labor & Employment

The American Lawyer Magazine's Litigation Department of the Year - Labor and Employment Law Finalist 2004, Winner 2006, Finalist 2008, and Finalist 2010

Listed in the highest tier for National Labor and Employment Practice in *Chambers USA 2010*

Ranked in the top tier by *The Legal 500* for Labor and Employment Litigation, ERISA Litigation, Labor-Management Relations, and Workplace and Employment Counseling (2010)

Ranked, National Tier 1: Employment Law - Management, *U.S. News* and *Best Lawyers* (2010)

Named one of *Law360*'s Employment Groups of the Year (2010)

Ranked #1 for "Most Prestigious" Labor and Employment Practice, Vault 2008 Associate Survey

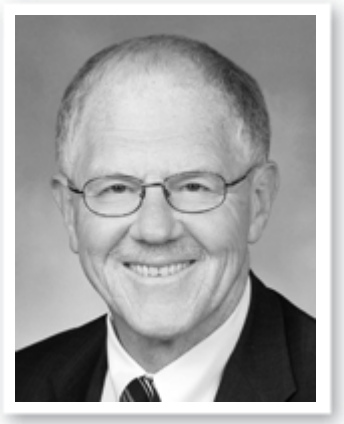
honors + affiliations

American Jurisprudence Award, Criminal Procedure
American Jurisprudence Award, Family Law
Prosser Award, Evidence Advocacy
Member, San Francisco Bar Association, Labor and Employment Law Section
Member, American Bar Association, Labor and Employment Law Section

education

University of California, Berkeley, Boalt Hall School of Law, 1993, J.D.
Pennsylvania State University, 1990, B.A., Phi Beta Kappa

Morgan Lewis



Christian J. Mixter

partner

Email: cmixter@morganlewis.com

Washington, D.C.
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
Phone: 202.739.5575
Fax: 202.739.3001

Christian J. Mixter is a partner in Morgan Lewis's Litigation Practice. Mr. Mixter's practice is concentrated in securities litigation, including SEC, SRO, and state enforcement proceedings and investigations, as well as shareholder class actions.

Mr. Mixter has represented public companies, broker-dealers, investment advisors, and individuals associated with those entities in a wide variety of matters. These matters have included disclosure and accounting cases, trading and insider trading cases, and mutual fund matters involving, among other issues, market timing and revenue sharing. Mr. Mixter has written and spoken frequently on securities law topics.

Prior to joining Morgan Lewis, Mr. Mixter was chief litigation counsel for the U.S. Securities and Exchange Commission's Division of Enforcement, with responsibility for supervising the conduct of all of the Commission's contested enforcement cases, both in the federal district courts and in the administrative forum. Before joining the SEC staff, Mr. Mixter served in the Office of Independent Counsel Lawrence E. Walsh during the Iran/Contra investigation.

Mr. Mixter is admitted to practice in the District of Columbia and New York.

practice areas

Litigation
Broker-Dealers
Securities Industry
Securities Litigation & Enforcement
Financial Services Litigation
Retail
Anti-Money Laundering
Broker-Dealer & Capital Markets Regulation
Foreign Corrupt Practices Act (FCPA)
Futures, Foreign Exchange, & Energy Trading
Washington Government Relations & Public Policy

bar admissions

District of Columbia
New York

court admissions

U.S. Supreme Court

honors + affiliations

Listed, *The Best Lawyers in America* (2007–2011)
Listed, *Chambers USA: America's Leading Lawyers for Business* (2008–2011)
Listed, *Who's Who in American Law*
Member, American Bar Association, Business Law and Litigation Sections
Member, Association of the Bar of the City of New York
Member, District of Columbia Bar Association
Member, Securities Industry Association
Articles Editor, *Duke Law Journal*
Member, Order of the Coif

education

Duke University School of Law, 1977, J.D.
Ohio State University, 1974, B.A.

Morgan Lewis

practice areas

Litigation

Corporate Investigations & White Collar

Foreign Corrupt Practices Act (FCPA)

Securities Litigation & Enforcement

Anti-Money Laundering

bar admissions

New York

Kelly A. Moore

partner

Email: kelly.moore@morganlewis.com

New York
101 Park Avenue
New York, NY 10178-0060
Phone: 212.309.6612
Fax: 212.309.6001

Kelly A. Moore is a partner in Morgan Lewis's Litigation Practice. Ms. Moore's practice concentrates on white collar criminal defense, regulatory enforcement matters, and related civil litigation. She has successfully represented clients in matters involving allegations of securities fraud, money laundering, healthcare fraud, antitrust violations, the False Claims Act, and violations of the bribery and books and records provisions of the Foreign Corrupt Practices Act (FCPA). Ms. Moore routinely represents corporate and individual clients before the U.S. Department of Justice, various U.S. Attorney's Offices, the Securities and Exchange Commission, the New York Attorney General's Office, and other state and federal agencies.

Ms. Moore's representations have included:

- Representing a global investment bank in connection with regulatory inquiries related to mortgage-backed securities
- Conducting an internal investigation for a global investment management firm in connection with a recordkeeping and false statements investigation by the Securities and Exchange Commission
- Conducting an internal investigation on behalf of the audit committee of a biotechnology company in connection with an options backdating investigation by the Securities and Exchange Commission
- Successfully defending a senior executive of a French company against FCPA allegations by the U.S. Department of Justice and Securities and Exchange Commission
- Conducting internal FCPA investigations for a Fortune 200 technology company in China, India, and Singapore
- Successfully representing the CEO of a Mexican reinsurance company in connection with an FCPA investigation by the U.S. Department of Justice and Securities and Exchange Commission
- Successfully representing individuals in connection with money laundering/internal controls investigations by banking regulators and the U.S. Department of Justice
- Successfully defending an ambulance company against allegations of Medicaid/Medicare billing fraud by the U.S. Department of Justice
- Successfully defending an international pharmaceutical company against allegations of off-label marketing by the U.S. Department of Justice
- Representing a Fortune 200 drugstore chain in connection with administrative and civil investigations into billing practices

Prior to joining Morgan Lewis, Ms. Moore served in the Department of Justice for 11 years as a federal prosecutor in the Eastern District of New York, most recently as the Chief of the Violent Crimes and Terrorism Section. As Chief of that section, Ms. Moore led the team of prosecutors responsible for the investigation and prosecution of the district's terrorism and terrorist financing cases, as well as RICO prosecutions of nontraditional organized crime groups. She has tried more than 20 federal jury trials and her experience includes handling international law issues, such as extradition, extraterritorial use of federal law, and the USA Patriot Act. As a federal prosecutor, Ms. Moore received the Attorney General's John Marshall Award for Trial of Litigation in 2005 and the Director's Award for Superior Performance by an Assistant U.S. Attorney in 1997 and again in 2003.

Ms. Moore is a frequent lecturer on a variety of topics, including federal prosecutions, internal investigations, the FCPA, and corporate compliance programs.

Ms. Moore received her J.D., with honors, from Duke University School of Law, where she served as an articles editor for the *Duke Law Journal*. She received her B.S. in political science from Georgetown University.

Ms. Moore is admitted to practice in New York.

honors + affiliations

Recipient, Attorney General's John Marshall Award for Trial of Litigation

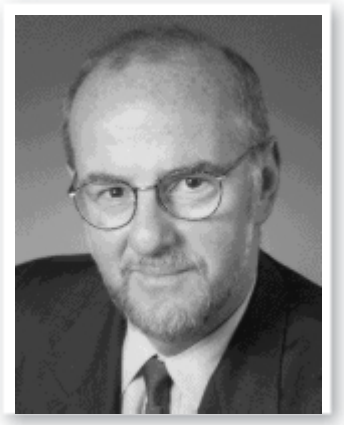
Recipient, Director’s Award, U.S. Department of Justice (1997 & 2003)

education

Duke University School of Law, 1991, J.D.

Georgetown University, 1988, B.S.

Morgan Lewis



practice areas

Litigation

Broker-Dealers

Corporate Investigations & White Collar

Securities Industry

Securities Litigation & Enforcement

Foreign Corrupt Practices Act (FCPA)

Broker-Dealer & Capital Markets Regulation

Investment Management

Accounting Litigation

bar admissions

New York

Robert M. Romano

partner

Email: rromano@morganlewis.com

New York
101 Park Avenue
New York, NY 10178-0060
Phone: 212.309.7083
Fax: 212.309.6001

Robert M. Romano is a partner in Morgan Lewis's Litigation Practice. Mr. Romano's practice focuses on a variety of securities regulatory litigation matters, including the defense of individuals and companies in the financial services industry in investigations and/or litigation by the Securities and Exchange Commission (SEC), FINRA, and state securities regulators for securities fraud, trading and sales violations, and related supervisory issues.

Mr. Romano has handled numerous matters involving financial and accounting fraud, including individuals, companies, and accounting firm personnel in investigations and litigation with securities regulators. He also has worked with white collar criminal defense matters, including the representation of individuals and companies in investigations by federal and state prosecutors for business-related crimes and general federal civil litigation.

Mr. Romano has served as the chair of the Practicing Law Institute's annual seminar on "Broker-Dealer Regulation & Enforcement" and is a regular panelist at that and other industry seminars.

Before joining the firm, Mr. Romano served as vice president and counsel (litigation) for Merrill Lynch, Pierce, Fenner & Smith, Inc. Prior to that, he was with the trial unit of the SEC's Division of Enforcement in Washington, D.C., serving as the deputy chief litigation counsel for his last two years of government service. Prior to his tenure at the SEC, he was an assistant U.S. attorney in Newark, New Jersey.

Mr. Romano is admitted to practice in New York.

honors + affiliations

Member, American Bar Association, Litigation Section

Member, Bar Association of the City of New York

Listed, *Chambers USA: America's Leading Lawyers for Business* (2006–2011)

Listed, *The Best Lawyers in America* (2007–2011)

education

Georgetown University Law Center, 1972, J.D.

Georgetown University, 1969, A.B.

Morgan Lewis

practice areas

Litigation

Corporate Investigations & White Collar

Antitrust

Anti-Money Laundering

Foreign Corrupt Practices Act (FCPA)

Qui Tam

Environmental Crimes

bar admissions

Pennsylvania

Eric W. Sitarchuk

partner

Email: esitarchuk@morganlewis.com

Philadelphia
1701 Market St.
Philadelphia, PA 19103-2921
Phone: 215.963.5840
Fax: 215.963.5001

Eric W. Sitarchuk is a partner in Morgan Lewis's Litigation Practice and chair of the Corporate Investigations and White Collar Practice. Mr. Sitarchuk focuses his practice on white collar litigation and has more than 25 years of experience in this area. He also handles related civil litigation, including Civil False Claims Act actions and antitrust class action defense. Mr. Sitarchuk has defended federal criminal and civil cases alleging healthcare fraud, clinical research fraud, antitrust and securities violations, import/export violations, technology transfer, theft of trade secrets, defense contract fraud, money laundering, official corruption, tax fraud, pyramid schemes, commercial bribery, environmental violations, kidnapping, and a variety of other offenses.

Mr. Sitarchuk's practice also includes defending complex government investigations. He has successfully persuaded prosecutors to take no action and close investigations of prominent lawyers, executives, public officials, Fortune 500 companies, and other institutions. Mr. Sitarchuk also counsels clients, including boards, audit committees, and management, on the development and implementation of internal compliance and ethics programs and the conduct of internal investigations.

Mr. Sitarchuk is a member of the prestigious American College of Trial Lawyers. He is also listed in *Chambers USA: America's Leading Lawyers for Business* in "Leaders in Their Field" in the area of litigation, *The Best Lawyers in America*, the *International Who's Who of Business Crime Lawyers*, and named a "Pennsylvania Super Lawyer" by *Law & Politics* and *Philadelphia* magazines in the area of Criminal Defense: White Collar.

Prior to joining Morgan Lewis, Mr. Sitarchuk was a partner in and head of the White Collar Litigation Practice at a large national law firm. Before that, he was an assistant U.S. attorney in the Criminal Division of the U.S. Attorney's office in Philadelphia. He also served as a special assistant United States Attorney in the U.S. Attorney's office in Washington, D.C. While there, he was the deputy prosecutor in charge of the criminal investigation of federal law enforcement's handling of the stand-off at Ruby Ridge, Idaho and its aftermath.

Mr. Sitarchuk is a frequent lecturer on topics such as white collar crime and Civil False Claims Act litigation. He was also a faculty member for the Department of Justice Office of Continuing Legal Education.

Mr. Sitarchuk received his J.D., with high honors, from the George Washington University School of Law in 1983, where he was a member of the *George Washington Law Review* and was named to the Order of the Coif. After law school, he served as a law clerk to Judge Bruce S. Mencher of the District of Columbia Superior Court. Mr. Sitarchuk received his B.A., cum laude, from Franklin & Marshall College in 1979, where he was elected

to Phi Beta Kappa.

Mr. Sitarchuk is a member of the Pennsylvania Bar Association and the American Bar Association's Criminal Justice Section White Collar Crime Committee.

Mr. Sitarchuk is admitted to practice in Pennsylvania.

selected representations

Healthcare Fraud and Abuse:

- Representation of a broad variety of pharmaceutical industry clients in criminal and civil investigations and litigation of issues, including off-label promotion, marketing practices, clinical trials and disclosure of adverse events, employment of an excluded pharmacist, pharmaceutical pricing (AWP), Anti-Kickback Act, best price, and drug switching.
- Negotiated a $425 million global civil and criminal settlement for a major bio-tech pharmaceutical manufacturer of litigation and investigations alleging illegal off-label marketing.
- Representation of a variety of hospitals and clinicians in criminal and civil investigations and litigation of issues, including Anti-Kickback Act, Stark regulations, employment of an excluded physician, physician supervision, coding, medical necessity, Medicare outlier payments, in-and out-patient psychiatric services, and hospital/clinical practice relationships and billing practices.
- Administrative matters, including exclusion and Corporate Integrity Agreements (CIAs), involving the Department of Health and Human Services Office of Inspector General. Negotiated CIAs for, among others, a national pharmacy chain, major pharmaceutical manufacturer, and a national provider of mental health services.
- Declination of prosecution in civil investigation of billing fraud in the provision of psychiatric services.
- Declination of criminal and civil prosecution of a major pharmaceutical company in an investigation of marketing practices in relation to a physician-administered drug.
- Declination of criminal and civil prosecution of a national managed care company in an investigation related to alleged violations of the Anti-Kickback Act and Medicaid Best Price rules.
- Declination of criminal and civil prosecution of a major hospital in an investigation of billing and medical necessity issues.
- Declination of criminal and civil prosecution of a major hospital in an investigation of supervision of surgery residents.
- Successful defense of individuals in a criminal and civil investigation of the conduct of a university based gene therapy clinical trial.
- Defense of administrative and civil investigations into pharmacy practices and billing.
- Favorable settlement of a civil investigation alleging violation of incident to billing rules, including securing an agreement by the Office of Inspector General not to require a Corporate Integrity Agreement.
- Review and analysis of the Compliance Program of a large hospital network.
- Federal criminal trial defense of a prominent doctor accused of illegally dispensing diet medication.

- Numerous internal investigations and voluntary disclosure of potential healthcare fraud and abuse issues.

International Business Investigations:

- Conducted a number of internal investigations of potential Foreign Corrupt Practices Act violations.
- Counsel clients on FCPA issues and FCPA compliance programs.
- Defense of criminal investigation of alleged violations of the International Trading in Arms in Arms Regulations (ITAR).
- Criminal declination of company under investigation for various alleged export violations.
- Successful defense of individual under investigation for alleged illegal exports to China.
- Represented individual charged with customs and other violations in connection with importation of software.

False Claims Act Litigation:

- Lead defense counsel in numerous false claims act matters throughout the United States.
- In healthcare matters, have defended a number of major pharmaceutical manufacturers, a national pharmacy chain, hospital and integrated healthcare systems, a national drug wholesaler, health insurers and managed care, a national utilization management company, among others.
- In government contract matters, have defended major defense contractors, aerospace manufacturers, and other suppliers of goods and services to the government.
- Represented numerous healthcare providers and government contractors in False Claims Act investigations where the government elected not to intervene or were otherwise declined without civil or criminal charges.
- An expert witness on False Claims Act investigations and litigation.

Government Contracts Fraud:

- Trial attorney for General Electric Corporation in a 3½ month federal criminal false claims and conspiracy federal fraud trial alleging fraud in a U.S. Army contract.
- Successfully defended numerous government contractors in false claims investigations that were resolved without the filing of a civil complaint or criminal charges.
- Obtained declinations of prosecution for numerous individuals under investigation or charged with government contracts fraud.
- Successful representation of a government contractor in an investigation of contracting by the Air Force Thunderbirds.
- Represented defendant charged with defense contract fraud in connection with investigation of Litton Industries.
- Conducted dozens of internal investigations of potential fraud issues for defense contractors.
- Preparation and submission of one of the first voluntary disclosures to the government by a defense contractor, a disclosure which helped form the basis for the Defense Industry Initiative and the Department of Defense Voluntary Disclosure Program.

- Have handled a number of suspension and debarment proceedings on behalf of several defense contractors.

Antitrust:

- Declination of prosecution of several major chemical companies in connection with investigations of alleged price-fixing.
- Declination of prosecution of a national newspaper and magazine distributor in connection with an investigation of alleged market allocation.
- Representation of a variety of clients in private civil treble damage and indirect purchaser litigation alleging antitrust violations, including price fixing, output restrictions and market allocation.
- Defense of a variety of investigations of alleging bid-rigging in various industries, including the municipal finance.

Securities Fraud:

- Representation of major pharmacy and retail chain in connection with criminal and civil investigations arising from a financial statement fraud scheme alleged to have been in the hundreds of millions of dollars. Assisted company in cooperating with the Justice Department's investigation and prosecution of the company's former executives. This cooperation resulted in a decision by United States Attorney not to pursue any criminal or civil charges against the company.
- Representation of the CEO of YBM Corporation in connection with what was alleged to have been the largest securities fraud case involving a Canadian stock exchange
- Defense in the Enron investigation of a prominent Houston real estate agent who was involved in one of the first "off-the-books" Enron partnerships. Obtained immunity for the client and dismissal of the civil litigation against her.
- Representation of a number of clients under investigation for alleged insider trading.

Official Corruption:

- Represented the Mayor of Philadelphia in the context of a wide-ranging investigation of alleged municipal corruption. No charges were brought against the Mayor.
- Defended the CFO of a multinational corporation in connection with an alleged scheme to make illegal campaign contributions. No charges were filed against the client.
- Represented an EPA official alleged to have received illegal pay-offs. Prosecution of the client was declined.
- Represented of a number of other present and former government officials.

Tax:

- Defended owners of a supermarket chain charged with various federal tax evasion.
- Defended owner of electrical contracting business charged with federal payroll tax violations and tax evasion.
- Represented prominent real estate developers charged with federal

payroll tax violations and tax evasion.

- Defended owner of video amusement company charged with federal tax evasion.
- Defense of prominent attorney charged with federal tax evasion.
- Represented owners of food distribution company charged with federal payroll tax violations and tax evasion.
- Defense of physician and business owner charged with participation in an illegal tax shelter.

Miscellaneous:

- Represented a large university in connection with an investigation and civil class action litigation regarding alleged trafficking in human body parts. Defeated class certification.
- Represented a prominent civil war artifacts dealer accused of perpetrating a fraud in connection with the Antiques Roadshow television program.
- Won acquittals of clients in criminal trials involving kidnapping, narcotics and other violations.
- Obtained two successive federal appellate reversals of a conviction and sentence of accountant accused of mail, wire, and bank fraud.

honors + affiliations

Fellow, American College of Trial Lawyers

Listed, *Chambers USA: America's Leading Lawyers for Business* (2005–2011)

Listed, *The Best Lawyers in America*, White Collar Defense, Health Care, and Commercial Litigation (2008–2011)

Listed, *International Who's Who of Business Crime Lawyers* (2003–2010)

Listed, *Pennsylvania Super Lawyers*, Top 100 in Pennsylvania (2004–2010)

Member, American Bar Association, Criminal Justice Section White Collar Crime Committee

Member, American College of Trial Lawyers' Federal Criminal Procedure Committee

education

George Washington University Law School, 1983, J.D., With High Honors

Franklin & Marshall College, 1979, B.A., Cum Laude

Morgan Lewis

practice areas

Litigation

Class Actions

Broker-Dealers

Securities Industry

Securities Litigation & Enforcement

Commercial Litigation

Broker-Dealer & Capital Markets Regulation

bar admissions

District of Columbia

Pennsylvania

court admissions

U.S. Supreme Court

U.S. District Court for the District of Columbia

E. Andrew Southerling

associate

Email: asoutherling@morganlewis.com

Washington, D.C.
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
Phone: 202.739.5062
Fax: 202.739.3001

E. Andrew Southerling is an associate in Morgan Lewis's Litigation Practice. Mr. Southerling's practice concentrates on the representation of corporate and individual clients in major securities and financial litigation, regulatory inquiries, and enforcement investigations and proceedings. He has represented clients before the Department of Justice, the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and other federal and state regulators. Mr. Southerling has a comprehensive background in securities regulation and enforcement.

Prior to joining the firm, Mr. Southerling was an enforcement attorney in the Philadelphia District Office of the SEC. During his six-year tenure with the Commission, he conducted informal and formal investigations and instituted civil and administrative enforcement actions related to many Commission program areas, including municipal securities, accounting, financial reporting, broker-dealer and investment adviser fraud, and insider trading. He also conducted parallel civil and criminal investigations with the United States Attorney for the Eastern and Western Districts of Pennsylvania and other federal, state, and local agencies.

Before his service with the SEC, Mr. Southerling was a litigation associate with a prominent Philadelphia law firm. His unique international background includes advanced academic coursework at the University of Hamburg and the Goethe Institute, and employment with two large multinational manufacturing companies, Hauni Werke, AG and Kunstoffe Kruger, AG, in Hamburg, Germany. He is proficient in German.

Mr. Southerling is admitted to practice in the District of Columbia and Pennsylvania and before the U.S. Supreme Court and the U.S. District Court for the District of Columbia.

honors + affiliations

Member, American Bar Association

Member, District of Columbia Bar Association

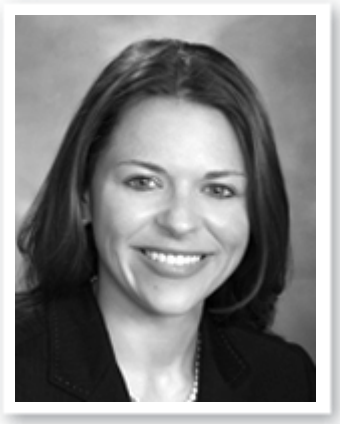
Member, Securities Industry Association

education

Catholic University of America, Columbus School of Law, 1994, J.D.

Villanova University, 1990, B.A.

Morgan Lewis



practice areas

Litigation

Corporate Investigations & White Collar

Foreign Corrupt Practices Act (FCPA)

bar admissions

New Jersey

Pennsylvania

court admissions

U.S. Court of Appeals for the Third Circuit

U.S. District Court for the Eastern District of Pennsylvania

U.S. District Court for the District of New Jersey

Alison Tanchyk

partner-elect

Email: atanchyk@morganlewis.com

Philadelphia
1701 Market St.
Philadelphia, PA 19103-2921
Phone: 215.963.5847
Fax: 215.963.5001

Alison Tanchyk is partner-elect in Morgan Lewis's Litigation Practice. Ms. Tanchyk's practice is concentrated in the representation of companies and individuals in all aspects of complex civil litigation, criminal investigations, and compliance and regulatory matters. She has defended companies and individuals in civil litigation and criminal investigations alleging antitrust and Foreign Corrupt Practices Act (FCPA) violations, healthcare fraud, tax fraud, securities fraud, and other various business frauds.

Ms. Tanchyk also counsels clients on matters related to the development, implementation, evaluation, and auditing of internal compliance and ethics programs. She advises companies on compliance issues in the context of third-party due diligence, and compliance policies, procedures, and training.

Ms. Tanchyk earned her J.D., cum laude, in 2003 from Temple University Beasley School of Law, where she was a member of the Temple Law Review. While in law school, Ms. Tanchyk worked as an intern for Judge Jan E. DuBois of the U.S. District Court for the Eastern District of Pennsylvania and Judge Bruce I. Fox of the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. She earned her M.A. from St. Peter's College in 2000 and her B.A., cum laude, from Rutgers University in 1998.

Ms. Tanchyk serves as a Hearing Committee Member of the Disciplinary Board of the Supreme Court of Pennsylvania.

Ms. Tanchyk is admitted to practice in Pennsylvania and New Jersey and before the U.S. Court of Appeals for the Third Circuit, the U.S. District Court for the Eastern District of Pennsylvania, and the U.S. District Court for the District of New Jersey.

selected representations

- Representation of a Fortune 100 company in an FCPA internal investigation in Korea and China and related inquiries by the U.S. Department of Justice and Securities and Exchange Commission.
- Representation of a Fortune 100 company in an FCPA internal and anti-competition investigation in Vietnam and Singapore and related inquiries by the World Bank.
- Representation of a Fortune 500 company in an FCPA internal investigation in Russia.
- Representation of an individual in a criminal tax fraud investigation involving allegations of, *inter alia*, use of an off-shore shell corporation and falsification of business deductions.
- Representation of an individual and corporation in a criminal tax

fraud investigation involving allegations of, *inter alia*, unreported payroll.

- Representation of individuals in a DOJ investigation involving allegations of, *inter alia*, Anti-Kickback Act and health care fraud violations.
- Representation of an individual and corporation in a putative federal civil class action involving, *inter alia*, RICO and 42 U.S.C. § 1983 claims.
- Representation of a pharmaceutical manufacturer in connection with a DOJ civil investigation involving allegations of, *inter alia*, off-label marketing.
- Representation of a pharmaceutical manufacturer in internal investigation of its contracting protocols and procedures in its selection and use of a clinical study investigator.
- Representation of a corporation in a federal civil antitrust action involving, *inter alia*, allegations of price fixing.
- Representation of a corporation in a federal criminal antitrust action involving, *inter alia*, allegations of price fixing and bid-rigging.

honors + affiliations

Listed, "Rising Star," *Pennsylvania Super Lawyers* (2005–2011)

Recipient, National Multiple Sclerosis Society Leadership Award (2004)

Past Member, Inglis Foundation Board of Directors (2005–2008)

Past Co-Chair, Criminal Justice Section White Collar Crime Committee, Philadelphia Young Lawyers' Division, American Bar Association

education

Temple University, Beasley School of Law, 2003, J.D., Cum Laude

Saint Peter's College, 2000, M.A.

Rutgers University, 1998, B.A., Cum Laude

Morgan Lewis

Beijing Boston Brussels Chicago Dallas Frankfurt
Harrisburg Houston Irvine London Los Angeles Miami
New York Palo Alto Paris Philadelphia Pittsburgh
Princeton San Francisco Tokyo Washington Wilmington

www.morganlewis.com