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Law Lets Whistle-Blowers Get Rich For Doing The Right Thing

Stuart D. Meissner 07.27.10, 1:10 PM ET

Last week, when President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, he, in effect, deputized hundreds of thousands of employees in Wall Street brokerage firms, hedge funds, mutual funds, and all other public companies to be the new eyes and ears of the Securities and Exchange Commission and the Commodities Futures Trading Commission.

The new law allows for a whistle-blower who provides “original information” leading to the successful prosecution of the violation of securities laws to recover anywhere from 10% to 30% of the total monetary sanctions recovered by the SEC or CFTC when such sanctions exceed 1 million dollars. In addition, an employee who is retaliated against either by discharge or “other discrimination” as a result of their whistle-blowing may sue in court for reinstatement at the same seniority level, double back-pay owed to the individual with interest, as well all costs and reasonable attorney’s fees.

In addition, to the extent the whistle-blower wishes, the law provides for anonymity and confidentiality of disclosures and various protections, if they wish to keep their identities secret even from the SEC or CFTC. In order to take advantage of anonymous reporting, however, the whistle-blower is required by the law to have attorney representation until compensation is to be paid.

The impact of this new statute will be far and wide, for all large companies regulated by the SEC directly (investment banks, broker dealers) or indirectly (all public companies), or by the CFTC, especially for many employees and consultants within the securities industry, including hedge fund employees, quantitative analysts, programmers, compliance officers, senior management, board members, branch managers and the ordinary broker--even the IT person who screens emails within a company.

Looking back in time, whistle-blowers in major scandals would have done very well. The SEC in 2003 recovered $500,000,000 in fines related to fraud charges from Worldcom. Such a fine would have delivered anywhere from $75,000,000 to $225,000,000 to a whistle-blower if one had been involved. More recently, just last week, Dell Computer was fined $100,000,000 by the SEC due to accounting irregularities, which would have resulted in a 10-to-30-million-dollar bounty for a whistle-blower if one had been involved. Of course, Goldman Sachs settled investor fraud charges with the SEC for the largest fine in SEC history totaling $550,000,000, which would have meant from $55,000,000 to $165,000,000 to a whistle-blower.

As a securities attorney who represents individual employees in whistle-blower claims and as former securities regulator, I have little doubt that the arsenal provided to individual employees just expanded several fold. In fact, on Friday, July 23, 2010, we were one of the first law firms to file a whistle-blower complaint pursuant to the new Dodd-Frank bill on behalf of a successful securities broker we represent against a major investment bank, his former short-term employer.

Our client was wooed to join the major firm based on the promise of a book of business, which belonged to another broker who our client was told had simply left the firm, but in reality it turned out he was fired. Upon arrival our client learned that the large book of business was replete with growing customer complaints related to a product that customers claimed the former broker misleadingly sold to clients and that the firm had failed to report these complaints. Instead the firm instructed our client not to put anything in writing and instead attempt to pacify the clients while the compliance department attempted to make “adjustments” to accounts of clients who complained.

Rather than be the “clean up “ person having to pacify the ex-employee’s clients who were allegedly defrauded by the prior

broker, our client and his assistant, within weeks of starting, went back to the brokerage firm from which they came and his FINRA record remained spotless.

Employees who wish to take advantage of the new law should first consult an experienced securities regulatory employment attorney to make sure that your rights, both as an employee and as a whistle-blower with the regulators, are protected; that the issues of concern in fact involve the violation of securities laws; and that you do not fall into one of the categories of people who are excluded from the law such as securities regulators and law enforcement officials. Consider saving any e-mails and documentary evidence that support the assertions.

Have your attorney notify the SEC or CFTC, as soon as possible, to be sure that you are the first to report the original information. Depending upon the circumstances, you may even want to consider documenting in writing to your employer that you have filed a whistle-blower complaint pursuant to the Dodd-Frank Bill, so that if there is retaliation you can prove that the employer was aware of the filing. This may afford you the ability to sue the former employer based upon the retaliation provisions of the act. The law notably also voids any pre-dispute arbitration agreements, and thus, contrary to most employment disputes within the securities industry, permits the employee to seek relief in federal court if needed.

The new bill, effective immediately, provides a brand new avenue for whistle-blowers to report wrongdoing relating to securities laws and appears to make the effort by the employee or ex-employee well worth their troubles. Anyone considering providing information based on this new whistle-blower statute would be well advised to consult confidentially with an experienced attorney familiar with such issues.

Stuart D. Meissner is a New York-based attorney, former securities regulator and financial crimes prosecutor for the New York State Attorney General. He represents individual investors, corporate whistle-blowers, securities employees and general consumers in matters related to securities violations.