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# SEC Guidance on Dodd-Frank Whistleblower Protection is a Win for Whistleblowers

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The SEC has issued interpretive guidance clarifying that Dodd-Frank Act whistleblower protection applies not only to whistleblowers that submit information to the SEC in accordance with the procedures for obtaining a whistleblower award, but also to whistleblowers that report potential securities law violations internally or to the SEC. This interpretive guidance is significant in that federal courts will likely defer to it in resolving ambiguity in the Dodd-Frank Act's anti-retaliation provision.

The SEC offers three reasons not to limit Dodd-Frank whistleblower protection solely to disclosures to the SEC's Office of the Whistleblower. First, the text of Rule 21F-2(b)(1) clarifies that Dodd-Frank whistleblower protection extends to the broad range of disclosures identified in Section 21F(h)(1)(A). That includes (i) providing information to the SEC through the whistleblower program; (ii) initiating, testifying in, or assisting in any investigation or judicial or administrative action of the SEC based upon or related to a whistleblower submission to the SEC; or (iii) making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 or "any other law, rule, or regulation subject to the jurisdiction of the Commission." The whistleblower protection provision of SOX includes internal disclosures about a violation of any SEC rule or regulation.

Second, Rule 21F-2(b)(1)(iii) expressly provides that "[t]he anti-retaliation protections apply whether or not [an individual] satisf[ies] the requirements, procedures and conditions to qualify for an award."

Third, the SEC's construction of Dodd-Frank whistleblower protection is driven by the policy goals and intent of the SEC whistleblower reward program:

> Specifically, by providing employment retaliation protections for individuals who report internally first to a supervisor, compliance official, or other person working for the company that has authority to investigate, discover, or terminate misconduct, our interpretive rule avoids a two-tiered structure of employment retaliation protection that might discourage some individuals from first reporting internally in appropriate circumstances and, thus, jeopardize the investor-protection and law-enforcement benefits that can result from internal reporting. Under our interpretation, an individual who reports internally and suffers employment retaliation will be no less protected than an individual who comes immediately to the Commission. Providing equivalent employment retaliation protection for both situations removes a potentially serious disincentive to internal reporting by employees in appropriate circumstances. A contrary interpretation would undermine the other incentives that were put in place through the Commission's whistleblower rules in order to encourage internal reporting.

The SEC's interpretation of Dodd-Frank's anti-retaliation provision recognizes that absent robust whistleblower protection, corporate insiders will be reluctant to report fraud and other securities law violations to the SEC. Fortunately, the SEC has recently taken concrete steps that send a strong message about the SEC's commitment to protecting whistleblowers. For example, the SEC took administrative action against KBR for requiring employees to sign confidentiality agreements that could impede employees from reporting violations. And the SEC took enforcement action against Paradigm, a hedge fund advisory firm, for whistleblower retaliation and for engaging in prohibited principal transactions. According to the order, Paradigm retaliated against its head trader for disclosing internally and to the SEC prohibited principal transactions with an affiliated broker-dealer while trading on behalf of a hedge fund client. The transactions were a tax avoidance strategy under which realized losses were used to offset the hedge fund's realized gains.

The SEC's demonstrated commitment to protecting whistleblowers will go a long way in ensuring the continued success of the Dodd-Frank whistleblower reward program, which has already proven very effective in combatting securities fraud.