

The Dodd-Frank Act: Whistle-blower Rewards in FCPA Cases

■ *Written by: Douglas Mancill*

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") into law. The Dodd-Frank Act primarily introduces major changes in the regulation of the financial services industry, but it also permits whistle-blowers in Foreign Corrupt Practices Act ("FCPA") and securities fraud cases to claim a 10% to 30% reward in enforcement actions where the penalties recovered exceed U.S.\$1 million. Because penalties in several recent FCPA cases have been in the hundreds of millions of dollars, these provisions of the Dodd-Frank Act could have an important effect on FCPA enforcement.

The rewards introduced by the Dodd-

Frank Act are controversial. Some argue they create a perverse incentive for employees to hide ongoing violations so they can report them externally (with the hope of collecting substantial rewards) rather than taking proactive measures to stop ongoing violations.

On the other hand, proponents argue that a reward system is needed because tips are the "cheapest and best" source of information about FCPA violations and that prospective tipsters currently face serious professional and personal risks.

These whistle-blower provisions are new and only time will tell what happens in practice. These new provisions, however, highlight the need for effective and meaningful FCPA compliance systems and

due diligence. Early voluntary disclosure can help undermine the effectiveness of whistle-blowers and mitigate potential damage from the underlying violation. But for this to work, companies must, at the very least, have an effective internal hotline system, and the information collected from that system must be properly assessed. Automated "tick the box" approaches to compliance are dangerous and misguided. Compliance and proper due diligence requires an honest, "hands on" assessment of all facts relevant to a possible FCPA violation. ■

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2011-2012 AMCHAM Board of Governors Election

Exercise your right to select the future leaders of AMCHAM - vote in the upcoming Board of Governors election. Vote before or at the Annual General Meeting at the October Membership Monthly Luncheon.

HOW IS THE SLATE OF CANDIDATES ESTABLISHED?

- The AMCHAM Board of Governors consists of 15 senior level executives who are respected members of the American business community and who possess the ability to think strategically and contribute to a developing vision for AMCHAM.
- Each year, AMCHAM elects approximately half of the Board of Governors to a two-year term. For the 2011-2012 term, seven board seats are up for election.
- A nominations committee solicits nominations and recruits individuals who they believe have the ability to serve the best interests of AMCHAM and its members. Candidates will be announced at the September Membership Monthly Luncheon.
- Each candidate for the board signs a responsibility statement confirming that he or she is committed to



the mission of AMCHAM. Board nomination guidelines and responsibilities are posted on the AMCHAM website under Libraries (AMCHAM Organizational Policies and Procedures).

WHO IS ELIGIBLE TO VOTE?

- Each Ordinary Regular or Ordinary Special AMCHAM member company is allowed one vote, to be cast by the designate or alternate of the company. Special representatives, affiliates, associates and honorary members are not allowed to vote.

HOW DOES ONE VOTE?

- Official ballots will be mailed out to all designates. The ballots may be submitted in person at the Annual General Meeting held in conjunction with the October Membership Monthly Luncheon.
- If you are unable to attend the Annual General Meeting, you may mail or fax the ballot to the AMCHAM office.