

# Client Alert

June 2014

## SEC Brings First Anti-Retaliation Action Under Dodd-Frank Whistleblower Rules

On June 16, 2014, the Securities and Exchange Commission (“SEC”) announced an enforcement action brought against a hedge fund advisory firm for engaging in prohibited transactions and retaliating against a whistleblower for disclosing potential securities law violations to the SEC.<sup>1</sup> The firm agreed to pay \$2.2 million to settle the charges without admitting wrongdoing. This is the first enforcement action brought by the SEC for retaliation against a whistleblower under the [new rules](#) adopted in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

The SEC’s order stated that a head trader at the firm reported potential securities law violations to the SEC. The SEC stated that, after learning of the disclosure, the firm:

- removed him from his head trader position,
- tasked him with investigating the very conduct he reported to the SEC,
- changed his job function from head trader to a full-time compliance assistant,
- stripped him of his supervisory responsibilities, and
- otherwise marginalized him.

The \$2.2 million settlement consisted of a \$1.7 million disgorgement, a \$300,000 penalty, and prejudgment interest. The firm also agreed to retain an independent compliance consultant. The SEC’s release did not indicate whether the whistleblower will seek a bounty available under the SEC’s rules.

In connection with the settlement, the chief of the SEC’s Office of the Whistleblower stated that “[f]or whistleblowers to come forward, they must feel assured that they’re protected from retaliation and the law is on their side should it occur.” He further stated that the SEC “will continue to exercise our anti-retaliation authority in these and other types of situations where a whistleblower is wrongfully targeted for doing the right thing and reporting a possible securities law violation.”

This action marks the first SEC effort to enforce its anti-retaliation authority under the whistleblower rules adopted pursuant to the Dodd-Frank Act. There is still some debate as to whether the SEC has the statutory authority to enforce the anti-retaliation provision, or whether a whistleblower himself must instead do so. Still, this action demonstrates that the SEC intends to take an aggressive posture on the issue.

As a practical matter, companies should make sure managers and human resources personnel are well-trained in dealing with whistleblowers and what might constitute retaliatory conduct. More generally,

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<sup>1</sup> In the Matter of Paradigm Capital Management and Candace King Weir, Release No. 72393 (June 16, 2014).

companies should continue to review their internal whistleblower policies and foster a corporate culture that gives employees the confidence to report potential violations within the company.

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