

## *Whistleblower Programs Improvement Act*

### **Background**

The Dodd-Frank Act established whistleblower protections for individuals who report violations of securities laws to the SEC or Commodities laws to the CFTC. These protections prevent whistleblowers from being retaliated against by their employer for reporting wrongdoing to the SEC or CFTC respectively. However, in [Digital Realty Trust, Inc. v. Paul Somers](#) (2018), the Supreme Court held that anti-retaliation protections afforded to SEC whistleblowers under [15 USC § 78u–6\(h\)\(1\)\(a\)](#) extend only to individuals who report violations directly to the SEC. Individuals who report violations to their employer but fail to report to the SEC are not protected.

### **The Issue**

Most companies require or encourage employees to report wrongdoing internally as a matter of policy and good management. This affords companies the opportunity to address any potential wrongdoing, mitigate any harm to investors, and, when necessary, self-report the findings of internal investigations to the SEC. Companies that self-report typically receive reduced penalties. Congress ought to encourage internal disclosures as the best way for publicly traded companies to prevent fraud and protect investors. The *Digital Realty* case will discourage internal disclosures and lead to more whistleblowers bypassing internal company disclosure policies and reporting directly to the SEC.

### **What the Bill Does**

- The WPRA protects a whistleblower who reports information to a supervisor or other individual who they believe is in a position to take corrective action.
- Dodd-Frank established that when a whistleblower provides original information to the SEC or CFTC which results in a successful enforcement action, the whistleblower is entitled to a portion of the monetary sanctions collected by the SEC or CFTC as a result of the disclosure. For SEC whistleblowers, sometimes it takes years after a fine was collected to receive the award. The WPRA resolves the issue by requiring that the SEC and CFTC issue an initial award determination within one year of the deadline to apply for an award.
- Provides the CFTC greater flexibility to share whistleblower information with law enforcement authorities and use the consumer protection fund to educate stakeholders about its whistleblower program. It also increases the amount the CFTC is able to hold in its Consumer Protection Fund from \$100 million to \$150 million.
- Harmonizes dispute resolution procedures under the SEC whistleblower protection law with provisions within securities and commodities laws to ensure whistleblowers can pursue judicial remedies under the Act.
- Corrects a drafting error in the Whistleblower Protection Act which prevents the Office of Special Counsel from investigating retaliation claims by Foreign Service employees in the form of a poor performance evaluation.

