



Competing for your employees' hearts and minds

What to do given the whistleblower provisions of the Dodd-Frank Act



Introduction

President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Act) on July 21, 2010.¹ A controversial provision under that Act requires the Securities and Exchange Commission (SEC or Commission) to establish a whistleblower bounty program to pay monetary awards to persons who voluntarily provide “original information” of misconduct leading to a successful enforcement action for violation of US securities laws. Those whistleblowers are entitled to receive an award of 10% to 30% of sanctions over \$1 million.²

The final rules that the SEC adopted on May 25, 2011³ permit whistleblowers to go directly to the Commission and thereby bypass the internal “hotlines” that the United States Sentencing Commission makes a centerpiece of an effective compliance and ethics program⁴ and that Congress mandated in the Sarbanes-Oxley Act of 2002.⁵ Employees can, if they wish, notify the company of their claims up to 120 days before or at the same time that they notify the Commission, but they need not do so to be eligible for a financial reward under the rules.⁶

This opportunity presents interesting challenges for both potential whistleblowers and corporate compliance programs. The question is whose “whistleblowers” will they be – the SEC’s, the company’s, or both?

Internal reporting by employees reflects effective self-governance; indeed, company codes of conduct typically *require* employees to ask questions and raise concerns. Thus, an effective compliance and ethics program fosters a culture of ethical behavior, open communication and non-retaliation in order to facilitate prompt investigation and resolution of all issues, including voluntary disclosure to government authorities if violations of law are found to exist.

The word “whistleblower” can imply a very different paradigm: a failure of mutual trust and self governance requiring recourse to a third party. In the interest of effective law enforcement, Dodd-Frank provides an alternative to address that potential state of affairs. On the other hand, the prospect of bounties creates the opportunity for adversarial proceedings that companies will need to manage.

We recommend that companies take a dual approach to the SEC’s whistleblower rules: first, strengthen your compliance and ethics programs. Employees have choices; the company should provide a credible alternative to external whistleblowing and litigation. Companies also should have robust risk assessment, compliance and monitoring processes to prevent and detect problems.

Second, prepare for potential whistleblower complaints made directly to the SEC. People and processes should be in place to support such elements as prompt investigation, relationship with the employee (including nonretaliation), legal advice and communication with the SEC and other enforcement agencies.

We view the Dodd-Frank whistleblower program as a clarion call to boards and corporate officers who are responsible for establishing a corporate culture of compliance and ethical business conduct, as well as for maintaining effective internal reporting mechanisms.

¹ Pub. L. No. 111-203, Section 922(a), 124 Stat. 1841 (2010). Section 922 of the Dodd-Frank Act added Section 21F to the Securities and Exchange Act (“Exchange Act”) entitled “Securities Whistleblower Incentives and Protection.” The SEC issued proposed rules on November 17, 2010, (see 75 Federal Register at 70488) and final rules were issued on May 25, 2011.

² See <http://www.sec.gov/rules/final/2011/34-64545.pdf> (hereinafter SEC Rules) at 3, 6-7, 20-24, 243 and Section 240.21F-3 at 245-247. A summary of the new rules follow later in this article.

³ See SEC Rules at 1 and 241-305.

⁴ United States Sentencing Guidelines (hereinafter Sentencing Guidelines or USSG) for Organizations, as amended (November 1, 2010), Chapter 8 at Section 8B2.1, (Part B - Remedying Harm From Criminal Conduct, and Effective Compliance and Ethics Program).

⁵ Section 301 of the Sarbanes-Oxley Act requires audit committees of public companies to establish procedures for submission of complaints about accounting, internal accounting controls or audit matters, including confidential, anonymous reporting by employees.

⁶ See SEC Rules at 2-7, 88-107 and 252-253.

Background on internal and external whistleblowing

For internal reporting, the United States Sentencing Guidelines for Organizations set the standard. The Sentence Guidelines are generally acknowledged among corporate compliance officers and practitioners as the bedrock for corporate compliance and ethics programs.⁷ The “Effective Compliance and Ethics Programs” section of the Sentencing Guidelines identifies a framework of seven core elements that are minimally necessary to demonstrate that the organization has met its core obligations to “exercise due diligence to prevent and detect criminal conduct and ... otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with law.”⁸

The seven core elements include a requirement for organizations to take appropriate investigative actions in response to suspected or reported compliance and ethics violations.⁹ This particular element of the Sentencing Guidelines came into sharp focus in the wake of fraud and corruption scandals that led to the passage of Sarbanes-Oxley.

Following Sentencing Commission guidance and Sarbanes-Oxley requirements, leading companies invested heavily to establish credible internal reporting procedures with dual aims of encouraging employees to report misconduct to company officials so a proper internal investigation could be conducted and to protect against government enforcement actions.

From the inception of the Sentencing Guidelines, the Department of Justice and the SEC adopted the Sentencing

Commission’s belief that internal reporting mechanisms are an essential component of an effective compliance program, both in the form of anonymous hotlines (often administered by third-party vendors) and through more traditional direct reporting procedures. This perspective on the importance of internal reporting mechanisms is consistent with the language in the Sentencing Guidelines, which states:

“To have an effective program to prevent and detect violations of law ... an organization shall ... promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”¹⁰

In other words, organizations should build credible programs to promote employee awareness of ethical and legal issues that may arise in the workplace; to encourage employees to seek ethics and compliance advice; to educate employees about applicable laws, regulations and company rules; and, importantly, to build trust among employees so that they will tell management about potential problems.

Mature compliance and ethics programs use other techniques to encourage internal reporting. Employees are required to sign annual certifications of a code of conduct, sometimes with explicit statements that they have reported to management all potential violations of law or policy of which they are aware. Compliance and ethics officers conduct employee surveys about employee attitudes and their confidence in confidential reporting options. They also use training sessions as occasions to invite discussions of

ethics issues that might be lurking beneath the surface.

Other incentives for external whistleblowing

In some industry sectors, employees who report problems to the government can earn bounties. For example, a person with information about a contractor that has made “false claims” for payment to the US Government might become a “relator” and bring a *qui tam* lawsuit on behalf of the Government, seeking treble damages and obtaining a bounty (typically 15% to 25%) of any recovery. Defense contractors and pharmaceutical manufacturers selling products for Medicare and Medicaid have paid billions of dollars in damages as a result of this type of legal action.¹¹

The *qui tam* law predates the modern compliance program by more than a century. Defense industry companies that built compliance programs have emphasized internal hotlines and open communications as an additional (and preferable) resource for employees.

Whistleblower options

The Dodd-Frank Act and the new SEC rules extend a whistleblower’s choice of pursuing a government bounty – funded from sanctions ordered to be paid by a company, its officers, directors or other employees in an enforcement action – or internal reporting for violations of the securities laws.

⁷ See Note 4, *Supra*.

⁸ See *Id.* at Section 8B2.1.

⁹ See *Id.*

¹⁰ USSG at Section 8B2.1(a) (emphasis added).

¹¹ See DOD-OIG, *Semiannual Reports to the Congress*, reports through September 2010; HHS-OIG, *Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2010*, January 2011.

SEC Chairman Mary L. Schapiro made this point when announcing the final regulations on May 25, 2011:¹²

"I believe that the final recommendation strikes the correct balance – a balance between encouraging whistleblowers to pursue the route of internal compliance when appropriate – while providing them the option of heading to the SEC. This makes sense as well because it is the whistleblower who is in the best position to know which route is best to pursue."¹³

However, the new SEC rules go a step further, permitting an employee to approach the company up to 120 days before going to the SEC. That option, the SEC says, is designed to encourage internal reporting. Chairman Schapiro stated:

"Incentivizing – rather than requiring – internal reporting is more likely to encourage strong internal compliance culture. Our rules create incentives for people to report misconduct to their employers, but only if those companies have created an environment where employees feel comfortable that management will take them seriously – and where they are free from possible retaliation."¹⁴

The question is what choice will an employee make along the range of options: open discussion in the normal course of day-to-day work, informal disclosure to a trusted manager or compliance officer, disclosure in an annual certification of the code of conduct, anonymous hotline report, or seeking a bounty through the SEC?

¹² See <http://sec.gov/news/speech/2011/spch052511,ls-item2.htm>.

¹³ *Id.*

¹⁴ *Id.*





Understanding your potential whistleblowers

Most whistleblowers “are dedicated and ethical employees, who work hard and try to do their jobs responsibly and competently.”¹⁵ They did not set out intending to “take a heroic stance or to confront the powers that be – they simply feel that they cannot go along with some course of action that seems wrong to them.”¹⁶ On this point, a 2009 National Business Ethics Survey by the Ethics Research Center (ERC Survey) indicates that “[e]mployees’ views about the need for government oversight were largely driven by the ethical culture in their workplace. The weaker the ethical culture, the more employees believed government involvement was needed.”¹⁷

Of note, “[a] study of 233 whistleblowers by Donald Soeken, St. Elizabeth’s Hospital in Washington, DC, found that the average whistleblower was a family man in his forties with a strong conscience and high moral values. After blowing the whistle on fraud, 90 percent of the whistleblowers were fired or demoted, 27 percent faced lawsuits, 26 percent had to seek psychiatric or physical care, 25 percent suffered alcohol abuse, 17 percent lost their homes, 15 percent got divorced, 10 percent attempted suicide, and 8 percent were bankrupted. But in spite of all this, only 16 percent said that they wouldn’t blow the whistle again.”¹⁸ The ERC Survey cited different types of retaliation: “[t]he majority of employees experienced interpersonal responses from their colleagues, rather than a direct impact on their job status or responsibilities.”¹⁹ Of interest, the ERC Survey notes that of the key measures it tracked since its 2007 survey, the only

negative trend was that “retaliation against those who reported misconduct increased.”²⁰

In sum, the literature indicates that whistleblowers are not primarily driven by greed. Most whistleblowers want to do the right thing. It is a combination of factors that can lead one to report misconduct to authorities. Some have found that “the single factor that is almost always present is ... moral outrage.”²¹

Should such a situation come to pass in a company, there must be many failures along the way: failures of compliance controls, of internal audit and monitoring processes, of leadership, of company culture and of confidential reporting systems. Following a brief summary of the SEC whistleblower provisions, we offer several recommendations to company boards and senior management.

15 “Who are Whistleblowers and how do they become one?” <http://gflorencecscott.wordpress.com/2008/11/17/who-are-whistleblowers-and-how-do-they-become-one/>. See also, “The Rise of Whistle Blowers” at http://www.trilightzone.org/the_rise_of_whistle_blowers.html.

16 “The Whistleblower’s Ordeal” at http://fairwhistleblower.ca/wbers/wb_ordeal.html.

17 ERC Survey at 31. The next ERC survey is due in 2011. See generally Ernst and Young LLP, *European fraud survey 2011: recovery, regulation and integrity* at 2 and 17.

18 Peter Rost, “Whistleblowers: Who Are They?”; <http://www.informationclearinghouse.info/article15622.htm>.

19 ERC Survey at 36.

20 ERC Survey at 9, 13 and 35.

21 “Qui Tam Stories: Why Become a Whistleblower” at <http://www.quitamhelp.com/static/stories/stories.html>.

Summary of the whistleblower regulations

The Dodd-Frank Act requires the SEC to pay awards, subject to certain limitations and conditions, to whistleblowers who provide it with original information regarding violations of the federal securities laws.²²

Incentive program

To receive an award under the regulations, a whistleblower must voluntarily provide the SEC with original information that leads to the successful enforcement by the Commission, of a federal court or administrative action, in which the Commission obtains monetary sanctions in excess of \$1 million.²³ As noted earlier, the whistleblower can receive 10% to 30% of monies obtained if the government action is successful.

Whistleblower. The term “eligible whistleblower” is defined as an individual who, alone or jointly with others, provides information to the Commission relating to a possible violation of the securities laws that has occurred, is ongoing or is about to occur.²⁴ Only “natural persons” are construed as whistleblowers – “[a] company or another entity is not eligible to be a whistleblower.”²⁵ The rules exclude parties such as regulators, people with an existing legal or contractual duty to report to the SEC, foreign government officials, individuals such as directors or officers who are informed of misconduct by another person such as a company employee, attorneys, auditors (internal and external), internal compliance personnel, and people criminally convicted in connection with the misconduct.

However, compliance personnel, internal auditors and external auditors can become eligible for rewards if they have “reasonable basis to believe” that disclosure to the SEC is necessary to prevent substantial financial injury or that the company is impeding the investigation, or if 120 days have passed since they provided information to an audit committee, chief legal officer, chief compliance officer or supervisor, or since they received the information if it was received under circumstances indicating that the audit committee, chief legal officer, chief compliance officer or supervisor was already aware of the information.²⁶

Voluntary submission of information.

In general, a whistleblower meets the voluntary requirement if he or she provides original information before it has been requested by the Commission or another government agency, the Public Company Accounting Oversight Board (PCAOB), or a self-regulatory organization.²⁷

Original information. Such information must be based upon the individual’s independent knowledge or independent analysis, not already known to the Commission and not derived exclusively from public sources, and provided to the Commission for the first time after July 21, 2010, the date of enactment of the Dodd-Frank Act.²⁸

Leads to successful enforcement.

The Commission defines this criterion as when the whistleblower’s original information was “sufficiently specific, credible, and timely to cause” SEC staff to open an investigation or reopen a closed investigation that

eventually results in a successful enforcement action.²⁹ (Eventual success can be months and years away given the time it takes to investigate a matter and to complete adjudication in an administrative, civil or criminal proceeding.³⁰) A second instance is when the whistleblower provides original information “about conduct that was already under examination or investigation by the Commission, the Congress” or other government authorities including the PCAOB, and the new information significantly contributes to the success of the action;³¹ or third, the individual provides original information “through an entity’s internal whistleblower, legal or compliance procedures for reporting allegations of possible violations of law before or at the same time [the person] reported them to the Commission” with the “entity later providing the information to the Commission” so long as that information meets either of the first two instances and the individual submits the same information to the Commission within 120 days of providing it to the entity.³²

Action. An action is described as a single judicial or administrative proceeding brought by the Commission, but it can include two or more actions arising out of the “same nucleus of operative facts.”³³

Monetary sanctions in excess of \$1 million.

This criterion includes penalties, disgorgement of funds and interest.³⁴

²² See SEC Rules, Section 240.21F-1 at 243.

²³ SEC Rules, Section 240.21F-3 at 245 (quotations omitted).

²⁴ See SEC Rules at 8-15 and Section 240.21F-2 at 244 (quotations omitted).

²⁵ See SEC Rules at 14 and 244.

²⁶ See generally SEC Rules at 7-85, 248-252 and 261-263.

²⁷ See SEC Rules at 31-39 and Section 240.21F-4 at 247.

²⁸ See SEC Rules at 39-55, 87-92 and 248-249.

²⁹ See SEC Rules at 93-107 and 252-253.

³⁰ See Note 41, *Infra*.

³¹ See SEC Rules at 252-253.

³² See *Id.*

³³ See SEC Rules at 107-112 and 253.

³⁴ See SEC Rules at 112 and 253-254.

Other key provisions

Other key provisions include determinations of an award, submission of whistleblower tips under penalty of perjury, non-retaliation provisions for reporting to the Government, and confidentiality of tips and disclosure thereof.

Award determination. In determining the amount of award (between 10% and 30%) for a successful action, the Commission will rely on a variety of factors, including:

- ▶ The significance of the original information to the success of a judicial or an administrative action
- ▶ The degree of assistance provided by the whistleblower in the course of any judicial or administrative action
- ▶ The SEC's interest in deterring violations of the relevant securities laws
- ▶ Whether the whistleblower voluntarily communicated to a corporate compliance program or, on the other hand, interfered with the corporate compliance program³⁵

Submission under penalty of perjury.

To encourage the submission of high-quality tips, the regulations require that the information be submitted under penalty of perjury.³⁶ If the information is submitted by an anonymous whistleblower, the individual must be represented by counsel who in turn must certify to the Commission that he or she has verified the whistleblower's identity.³⁷

³⁵ See SEC Rules at 117-126 and Sections 240.21F-5 and 240.21F-6 at 254-261.

³⁶ See SEC Rules at 264.

³⁷ See *Id.* and SEC Rules at 127-133.

Non-retaliation and confidentiality.

Dodd-Frank and corresponding SEC rules enhance whistleblower protections to help prevent corporate retaliation. They include:

- ▶ A new private right of action for whistleblowers against employers that "discharge, demote, suspend, threaten, harass ... or in any other manner discriminate" in retaliation
- ▶ A six-year statute of limitations for whistleblowers to file suit, or three years if the whistleblower knew or should have known he or she was fired for alleging wrongdoing
- ▶ Entitlement to jury trials for discrimination lawsuits
- ▶ Pre-dispute arbitration provisions rendered unenforceable, even if they are part of a whistleblower's employment contract³⁸

It is not clear how effective these provisions and others will be.³⁹ However, the provisions allow for a whistleblower's identity to remain confidential. The SEC nonetheless acknowledges that there can be instances in which the identity of an individual can be disclosed, such as if a matter results in a criminal prosecution, and the Commission determines it necessary under 15 USC Section 78(a) to protect investors, or in accordance with the Privacy Act of 1974 (5 USC Section 552a).⁴⁰

³⁸ See Section 21F(h)(1) of the Securities Exchange Act and SEC Rules at 244.

³⁹ For the first reported federal civil case of the application of the Dodd-Frank Act anti-retaliation measures, see "First Dodd-Frank Whistleblower Case May Impact Internal Investigations" at <http://dodd-frank.com/first-dodd-frank-whistleblower-case-may-impact-internal-investigation/>. According to the news account, an employee reported alleged CEO misconduct (diverting funds) to the board that was later confirmed by outside counsel. Despite independent directors' assurance that the employee would not be fired, the CEO took control of the board and the employee was fired. The employee is suing; the company is opposing the employee's claim to protection under the whistleblower protections.

⁴⁰ See SEC Rules at 260-261.

Recommendations

The following are our recommendations to help company boards and senior management meet the challenges of the whistleblower provisions.

1. Consider the situation through the eyes of employees. Other than the few truly mercenary individuals who might be motivated only by the prospect of a bounty, you are dealing with the human equation and the difficult choices that individual employees will make.
 - ▶ Assess whether employees – in all the company's operations and in all parts of the world – trust the company, its management and internal reporting protections enough to share a troubling issue.
 - ▶ Consider whether the company has effective informal communication methods and an open culture that encourages discussion, and whether the confidential reporting system is potentially intimidating and remote.
 - ▶ Provide internal whistleblowers with the ability to track the progress of the cases that they report so they can see that complaints are taken seriously. Publish information for all employees about cases filed and resolved through internal reporting mechanisms and other sources.
 - ▶ Educate employees about the types of tips and complaints that the company considers significant.

2. Strengthen the tone at the top and at all levels of management:
 - ▶ Seek different avenues for senior management to communicate its commitment to ethical business behavior and for open discussion about potential violations of company policies, laws or regulations, allowing you to improve your message and reinforce your credibility with your audience.
 - ▶ Encourage employees to look to their supervisors for indications that tone at the top is taken seriously. Determine whether the tone at all levels of management is consistent with the tone from senior management and the board.
 - ▶ Invest in improving your company's culture, values, ethics and integrity. Consider whether to update your code of conduct and ethics-related policies so that they resonate with employees. Reaffirm that your company is not just about trying to stay within the letter of the law, but is also about doing the right thing. This may require increased resources and budgets.
 - ▶ Evaluate the key aspects of the company's ethics and compliance messaging across business units, functions and geographies: frequency format, accessibility, training and consistency. Regularly communicate case studies indicating resolution of reported misconduct.
 - ▶ Confirm whether company principles are reflected in the company's daily operations and communications. Seek evidence to support your conclusions.
- ▶ Seek feedback from your employees, particularly from your front-line employees, about whether they fully understand the company's values.
- ▶ Seek to understand issues and problems beneath the surface. Ask employees whether they feel they are challenged by ethical dilemmas. Probing of perceived issues across business units and silos can facilitate proactive solutions and improve confidence in the company.
3. Seek to reassure employees that retaliation will not be tolerated.⁴¹ Back it up with protections for employees who use internal reporting mechanisms.
4. Seek to understand how informal peer groups operate at your company in the hope of minimizing direct or indirect retaliation by coworkers.
5. Create a committee including senior management that is accountable for ethics matters, including evaluating and encouraging more frequent reporting of misconduct, and that is vigilant in preventing retaliation. The committee should consider creating subgroups that cut across business units and departments. Consider having front-line employees serving in the subgroups.
6. Make ethics an element of each executive's and manager's performance review. More specifically, include ethics metrics in evaluations, have them certified by the Chief Compliance Officer or the boards' audit committee, and require that ethics metrics be met before executives and managers are eligible for maximum financial or other incentives.
7. Be proactive about identifying and getting information directly or anonymously from vendors and contractors about ethics and compliance issues. Find out if they have observed misconduct or retaliation.
8. Consider modifying the standard form of agreements (employment, agency, vendor, etc.) to reinforce obligations to comply with ethics and compliance policies and procedures.
9. Strengthen the transparency of your financial reporting and disclosure practices. Transparency is the degree to which an organization provides access to information, accepts responsibility for its actions and makes decisions more openly.⁴² "Transparency and accountability, intertwined, signal the trustworthiness of an institution and its leaders."⁴³ Governance improves when information is provided to stakeholders and interested parties.
10. Re-evaluate the effectiveness of your existing fraud detection processes. A 2010 Occupational Fraud and Abuse Report by the Association of Certified Fraud Examiners indicated that "[t]ips were by far the most common detection method in our study, catching nearly three times as many frauds as any other form of detection."⁴⁴ The study reflected that in entities that had hotlines, 47% of frauds were detected by tips versus 34% in entities without hotlines.⁴⁵

⁴¹ Of note, given the amount of time it takes to conclude an enforcement action, a whistleblower may not receive an award for years. If the whistleblower employee decides to remain with the company, there are concerns of ostracism by the employee's formal and informal peer work group and other forms of retaliation. The ERC Survey cites interpersonal responses from colleagues as the greatest source retaliation or ostracism. See ERC Survey at page 36.

⁴² ERC Survey at page 21; citing C. Ball, "What is Transparency?" *Public Integrity*, 11(2), 293-307. (Quotations omitted.)

⁴³ ERC Survey at 22.

⁴⁴ Association of Certified Fraud Examiners, *2010 Report to the Nations on Occupational Fraud and Abuse* at 16.

⁴⁵ *Id.* at 17.

11. Be certain to have a process and software in place to capture, store and afford protection to incident information covering a wide area including hotline tips, potential fraud and abuse occurrences, audit findings, legal cases and even everyday occurrences such as workplace accidents. This will allow you to detect issues, problems and complaints of any sort from across the enterprise and address matters proactively before they become larger problems.
12. Prepare in advance for Dodd-Frank whistleblower complaints with people, policies and procedures that will enable the company to move swiftly and effectively to assess whistleblower claims while managing litigation risks:
 - ▶ Respect the law enforcement role of the SEC and the company's obligations to review potential significant violations of law, regardless of the source. Law enforcement agencies encourage prompt disclosure of significant violations and cooperation in their investigations. With a Foreign Corrupt Practices Act allegation, the company might also need to deal with the Department of Justice.
 - ▶ Request cooperation of the whistleblower and obtain legal advice about his or her obligation to cooperate, particularly if he or she is an employee or contractor of the company who has signed an acknowledgement of an obligation to report potential problems.
 - ▶ Respect the whistleblower's right to file a good-faith complaint, without fear of retaliation, and guard against perceptions of retaliation or mistreatment.
 - ▶ Remain aware of litigation pitfalls. The whistleblower might, for example, be facing termination for poor performance, making the dispute multifaceted. Recognize that the whistleblower's lawyer might seek to broaden the investigation, limit cooperation or otherwise seek tactical advantage to increase the size of a potential award or leverage a negotiating position.
 - ▶ Review company records in detail. The whistleblower might not have presented "original information" or might otherwise not qualify for a bounty from the SEC.
 - ▶ Focus on the time it takes to escalate, investigate and resolve all issues that might lead to external whistleblower complaints if not promptly addressed. For example, internal compliance personnel and internal and external auditors can become whistleblowers if 120 days have passed since they made reports to their supervisors, the audit committee, general counsel or chief compliance officer.

Conclusion

According to the ERC Survey, "[the] results make very clear that where we find a strong ethical culture, we also find a sense of openness and responsibility at all levels of an organization."⁴⁶ As Chairman Schapiro indicated, the Dodd-Frank Act and the SEC's new rules provide choices for people who identify potential violations of the securities laws.⁴⁷ Companies that provide good and credible avenues for internal disclosures (along with effective compliance processes to prevent and detect violations) meet their general obligations of corporate governance and legal compliance, and they lessen the likelihood of a whistleblower case with a law enforcement agency.

Our recommendations can lead to increased trust by employees in reporting misconduct and in the company's commitment to address problems. Our recommendations also can lead to improved employee morale and satisfaction, as well as improved risk management, compliance and integrity within the company.

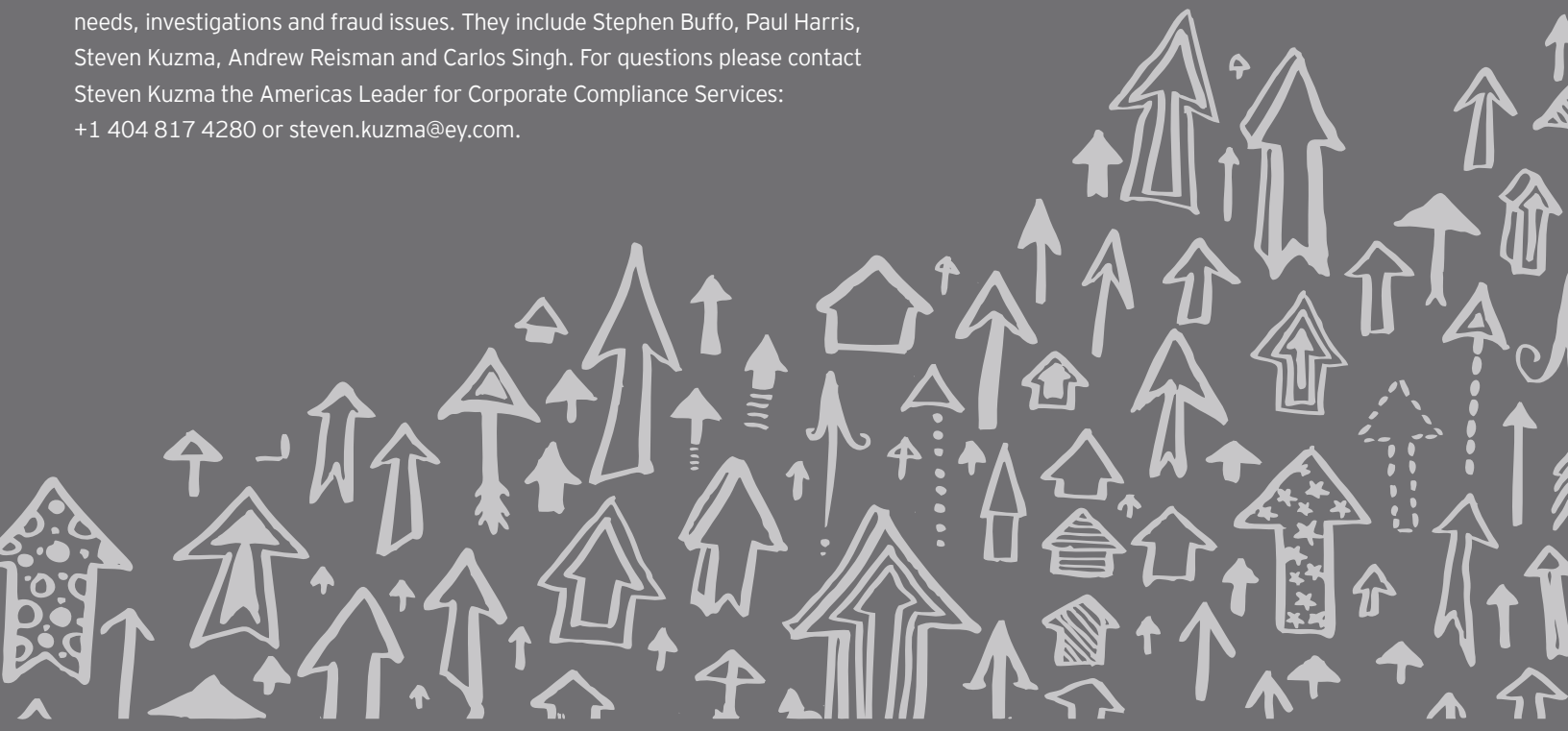
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⁴⁶ ERC Survey at 6.
⁴⁷ See Note 12, *Supra*.



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