

## WHISTLEBLOWER PROVISIONS OF THE DODD-FRANK ACT

### KEY TAKEAWAYS

1. Consider steps to enhance effectiveness of compliance programs:
  - Might Reduce likelihood of violation
  - Might Increases likelihood that entity will detect violation before whistleblower
  - Might reduce likelihood of whistleblower going to SEC - Awareness and emphasis on policies can create an environment of compliance and as sense of camaraderie.
  - Might result in lower monetary sanctions if SEC brings enforcement action
2. Consider increased use of attorneys in compliance/internal audit type roles
3. Consider internal reward program?
4. Consider reviewing procedures for handling suspected whistleblowers
5. Consider government disclosure
  - not for all circumstances
  - if decide to disclose, affirmatively present non-prosecution factors
  - if decide to disclose, affirmatively present issues regarding whistleblower characteristics and credibility
6. Get ready for internal investigations
  - Templates for document retention, etc.
  - Privilege issues, delegation memorandum
  - Selection of special counsel in advance
7. Consider providing protection to internal individuals who submit information to compliance department



#### CO-SPONSORS



#### IN-KIND SPONSORS



8. Protection from retaliation does not depend upon qualification to receive a bounty
9. Standard "for retaliation protection": Does the whistleblower have a "reasonable belief" that is providing information about a possible securities law violation?
10. Retaliation claims can be brought in federal court seeking double back pay
11. Supreme Court has expanded protections against retaliation in employment law context to those in the "zone of interests"
12. Retaliation is context specific – no clear lines define what is or is not retaliation