CARLTON FIELDS

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SEC Whistleblower Awards to Insurance Department Employees?

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Many federal, state, and local governmental employees may be eligible for awards pursuant to the SEC's whistleblower program under the Dodd-Frank Act. If a report to the SEC leads to an enforcement action that results in sanctions of more than $1 million, a whistleblower could receive up to 30 percent of the sanction amount. However, under the terms of the program, employees of "law enforcement organizations" are ineligible to receive such whistleblower awards.

On July 25, the SEC issued an order granting a whistleblower award to a governmental employee for the first time. The order explains the term "law enforcement organization" as generally having to do "with the detection, investigation, or prosecution of potential violations of law." In this case, the government agency that employed the whistleblower did have such law enforcement responsibilities, but those responsibilities were performed by a "clearly separate agency component." Because the whistleblower did not work in that component of the agency, the SEC found it appropriate to grant an award.

The SEC's conclusion, however, was limited to that particular instance, which was "not a situation where a [whistleblower] sought to circumvent the potential responsibilities that his or her government agency might have to investigate or otherwise take action for misconduct." The order does not provide many other facts – such as the identity or nature of governmental employer – that could help predict how the SEC will resolve similar questions in future cases.

Accordingly, it is difficult to ascertain the extent to which various categories of persons employed by state insurance regulatory entities might be able to claim whistleblower awards. The SEC would likely make a determination based on the facts and circumstances of each individual case, which could vary widely given the considerable diversity in the organization and operations of such regulators. Nevertheless, this order certainly increases the possibility that employees of state insurance regulators who become aware of potential securities law violations by insurance companies or affiliates will have an economic inducement to advise the SEC.