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President's Message

Brenna Nava, Corporate Counsel, Rackspace Hosting

Leadership and Learning are Indispensable to Each Other.

In my previous message, I discussed the importance of filling your life with experiences. It was great to see so many of you at the ACC's annual golf tournament, our Thirsty Thursday happy hour, and the Missions baseball game. Thanks for taking the time to connect with other members. Today, I want to focus on another benefit of your ACC membership: knowledge-sharing materials about topics that matter to a corporate legal department.

The ACC offers multiple ways for its members to stay on top of the latest changes and updates in the law. Check out the ACC website if you are looking for articles or presentations on timely topics. As an ACC member, you also have access to a database of template documents that is a valuable resource for attorneys who are new to in-house practice. Look for a refresh as the ACC staff works to incorporate recent feedback on how to make the website even better. And, if you have not done so already, please check out our chapter website at: <http://www.acc.com/chapters/san-ant/>. We regularly post information from our sponsors following their presentations at our monthly luncheons.

John F. Kennedy once said: "Leadership and learning are indispensable to each other." As lawyers and leaders at our companies, we are constantly learning. Rackspace provides all new employees with an opportunity to take the Gal-

lop CliftonStrengths test to identify their top five strengths. The CliftonStrengths assessment provides someone or a team with the opportunity to develop strengths by building on their greatest talents — the way they most naturally think, feel, and behave as a unique individual or team.

After taking the assessment, I discovered that I have "learner" in my top five strengths. According to Gallup, if you have learner as a top strength: "You love to learn. The subject matter that interests you most will be determined by your other themes and experiences, but whatever the subject, you will always be drawn to the process of learning." Likewise, I suspect that many of you have learner as a strength as well because as attorneys we are constantly learning new things as the law and our companies evolve and change.

Not surprisingly, technology is driving so many of these changes. I still remember using floppy disks for my computer and cassette tapes to record music. Now, everything is digital and in the cloud. Even though laws are constantly evolving, they struggle to keep up with the rapid pace at which technology keeps changing the facts. Today, your pacemaker, Fitbit and Alexa can be used against you in a court of law.

One recent example, the capture of the Golden State Killer, has ignited a debate around privacy risks for individuals who use genetic testing ser-



vices to trace their ancestry or medical history. The huge break in this over 30-year-old case came from modern DNA and genealogy analysis tools. California investigators linked samples of DNA that the killer had discarded from his home to DNA that one of his relatives

had uploaded to the website of GEDmatch, a Florida-based DNA analytics firm. The news that investigators were able to use this technology to breakthrough a long cold-case is fantastic but also highlights the lack of awareness many who use genetic testing sites may have about how their data can be accessed and for what purpose. Although the killer did not place any DNA test results online, his family did. DNA testing has reached a level of popularity that ensures many of us have parts of our genome available online, even if we have never participated in genetic testing ourselves. Pair this case with the recent news on Facebook's partnership with Cambridge Analytica, you may wish you could pick your family and you should choose your friends wisely. I don't say all of this to scare you away from technology. I did not share information about my friends with Cambridge Analytica but I am interested in learning more about my genealogy. I mention this as a reminder that we are the lawyers and watchmen for our companies. It is critical that we stay on top of these ever-evolving laws. For more information on how technology impacts the practice of law, check out the ACC website.

ACC Advocates for a Seat at the Table: General Counsel at the Executive Table and the Boardroom

By Mary Blatch, Director of Government and Regulatory Affairs, ACC
Stephanie Johnson, Manager, Public Policy and Advocacy, ACC

ACC has launched an exciting new initiative to ensure that general counsel have a seat at the executive table and in the boardroom. Based on our 2013 research report, [Skills for the 21st Century General Counsel](#), it is clear that CEOs and boards of directors increasingly want the general counsel to contribute to corporate strategy. Additionally, when the general counsel has a seat at the executive leadership table, it shows that a company considers ethics, compliance, and other legal risk considerations to be top of mind.

Despite the clear benefits of securing a seat at the table for general counsel, [ACC's Chief Legal Officers 2018 Survey](#) (CLO Survey) indicates too many general counsel do not have a direct reporting relationship with the CEO and do not regularly attend board meetings. Globally, only 64 percent of general counsel report directly to the CEO, and 73 percent "almost always" attend board meetings.

The CLO Survey includes companies across the globe and of all sizes, but the statistics don't change greatly for US companies or even public companies. In the United States, 70 percent of general counsel report directly to the CEO and 76 percent almost always attend board meetings. Among public companies, 70 percent of general counsel report directly to the CEO and 80 percent almost always attend board meetings.

ACC believes that these numbers are too low. They indicate that too many general counsel find themselves without the information, access, and influence they need to fully contribute in order to ensure their company stays ahead of risk and maintains a healthy corporate culture. By advocating on this issue, particularly to boards of directors and institutional investors, we aim to improve the role and status of general counsel and promote ethics and compliance as vital aspects of corporate culture.

Starting a Movement

Last year, when the National Association of Corporate Directors (NACD) announced that the focus of its annual Blue Ribbon Commission Report would be corporate culture, ACC submitted a white paper detailing how executive reporting and board access for general counsel is a corporate governance matter. In "Leveraging Legal Leadership: The General Counsel as a Corporate Culture Influencer," ACC identifies five key indicators of a general counsel who is well positioned as a key ally in establishing a corporate culture of compliance and ethics:

1. The GC reports directly to the CEO and is considered part of the executive management team;
2. The GC has regular contact with the board;
3. The GC is viewed as independent from the management team;
4. The GC advises on issues outside the traditional legal realm, including ethics, reputation management, and public policy; and,
5. Business units regularly include the legal department in decision-making.

The ideas in ACC's white paper served as the basis for Recommendation #5 in the NACD Blue Ribbon Commission Report on Culture as a Corporate Asset, which instructs directors to assess whether the chief legal officer or general counsel is well positioned within management and in relation to the board.

In addition to having the role of the general counsel included as a recommendation in the NACD report, ACC has been creating other thought leadership on this subject. ACC partnered with the John L. Weinberg Center for Corporate Governance at the University



TAKE YOUR PLACE.

of Delaware to film a video on the Seat at the Table topic. In addition to ACC President and CEO Veta T. Richardson, the video featured Gloria Santona, former McDonald's general counsel and current board member at Aon plc, and Weinberg Center Associate Director Ann Mulé. The Weinberg Center distributed the video to thousands of influencers in the corporate governance space.

ACC and the Weinberg Center also worked together to interview Kenneth C. Frazier, president and CEO of Merck. Frazier highlighted the significance of a direct reporting line between the general counsel and the chief executive officer, stating that, "If the CEO isn't listening to the lawyers, neither will anyone else in the organization. Setting the appropriate tone from the top is essential."

In response to a public consultation of the United Kingdom Financial Reporting Council (FRC), ACC submitted comments urging a recommendation that general counsel report directly to the CEO and regularly attend board meetings. According to the Chief Legal Officers 2018 Survey, only 47 percent of general counsel in the UK report directly to the chief executive officer.

ACC staff have also engaged in speaking opportunities on the topic of general counsel influence. These include

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presentations at the SMU Dedman School of Law Corporate Counsel Symposium, NACD Philadelphia, the ABA Business Law Section Fall Meeting, and Ethisphere's Global Ethics Summit.

Most recently, we interviewed Teri Plummer McClure, chief human resources officer and senior vice president of labor for UPS. The Weinberg Center video, the interviews, and more are available at www.acc.com/governance.

Also available on the website are a number of our media placements on this topic, including articles in Law360, Ethisphere Magazine, The Global Legal Post, Le Monde Du Droit, and the Financial Times.

What's Next?

As ACC seeks to further support our positions on the importance of the general counsel, we will be looking to leverage the wealth of data that comes from our annual CLO Survey and other research projects. We are also looking to take the initiative globally. Most areas outside of the United States have lower levels of direct-to-CEO reporting and board attendance among general counsel.

As an ACC member, you can help as well. We would love to hear from general counsel who do not currently report to the CEO or who did not report to the CEO in a prior role. Any stories that illustrate potential pitfalls of reporting arrangements

where the general counsel does not have access to the CEO is helpful to us in creating case studies, and of course, we value your privacy and treat this information as confidential. Finally, if you have connections in the company directory or institutional investor communities, you can be of assistance as we look for additional avenues of communicating our message to these constituencies.

Be sure to check out our activities at www.acc.com/governance. For more information about ACC's Seat at the Table initiative or if you would like to discuss other issues relevant to ACC advocacy, please feel free to contact the author at m.blatch@acc.com or 202-677-4775 or email our team at advocacy@acc.com.

ACC News

2018 ACC Annual Meeting: Exclusively for In-house Counsel

The 2018 ACC Annual Meeting, the world's largest gathering of in-house counsel, is scheduled for October 21-24 in Austin, TX. In less than three days you can choose from over 100 substantive sessions to fulfill your annual CLE/CPD requirements, meet leading legal service providers and network with your in-house peers from around the world. Group discounts are available. Visit am.acc.com for more information.

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, June 4-6, September 12-14, and November 7-9
- Finance and Accounting for In-house Counsel, September 5-7
- Project Management for in-house Law Department, November 14-15

Learn more and register at www.acc.com/businessedu.

Are You Conducting Diligence on EVERY VENDOR and Third-party that has Access to Your Systems or Data?

Your vendors are now prime targets for data breaches and small vendors can provide easy access for hackers. Even cleaning crews, HVAC vendors, and food distributors, to name a few, can all lead to data breaches, but are often overlooked in the vendor diligence process. ACC's Exclusive third-party due diligence service should be in your arsenal. Visit www.acc.com/VRS for more information.

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 20-22, Philadelphia, PA), combines practical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights from experienced in-house counsel, earn CLE/CPD credits (including ethics credits) and build relationships and expand your network of peers. Register at ccu.acc.com.

ACC Chief Legal Officers 2018 Survey

The ACC Chief Legal Officers Survey offers an opportunity to get data that supports the imperative for the CLO to report directly to the CEO. Other notable findings include what keeps CLOs up at night, reporting structures, how CLOs view the future of departmental budgets and staffing, litigation and contract workload, and where data breaches and regulatory issues have the greatest impact. Download it today at www.acc.com/closurvey

Over-retention of personal data is an egregious violation of the GDPR and data protection laws. Meet your requirements in 45 days with Jordan Lawrence's proven standards, models and frameworks that are relied on by hundreds of your corporate counsel peers. Demonstrate compliance. Reduce risks. Learn more today: [Data Minimization Service](http://DataMinimizationService.com)

A Guide to Due Diligence Preparedness - a free eBook from Wolters Kluwer and effects. To help you prepare for a due diligence, download our due diligence guide that includes a helpful checklist to rate your current readiness and identify where you need to improve your company's legal data governance. For more visit www.WoltersKluwerLR.com.

2018 ACC Chapter Board of Directors



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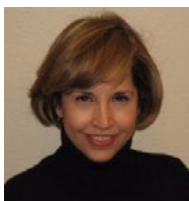
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Is Your ACC Member Profile Up-To-Date?

You may edit/update your contact or personal information, etc. by logging into www.acc.com and selecting "My ACC." Then click on "My Contact or My Personal Info." Scroll to the bottom of your profile and click on "Edit My Info." It's that easy!

Job Openings?

Is your company looking to fill an in-house position? Do you know about a current in-house job opening? If so, please let us know so that we can advertise the position to our membership.

Send an email to our Chapter Executive Director at southcentraltx@accglobal.com.

Don't Miss!

This year our monthly CLE luncheons will continue to take place at the Plaza Club.

The cost to attend the luncheons is \$15.00 for members and \$25.00 for non-member guests. (In-house counsel and sponsoring firm only, please.) Check out our Chapter web page at <http://www.acc.com/chapters/sanant.php> for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs at a more affordable price that is specifically geared to meeting the needs and issues of in-house counsel.

For more information, or to register for any of these events, contact Amber Clark at southcentraltx@accglobal.com

ACC Running Club- "Team Accelerate" News



The ACC Running Club is in the process of planning some great runs for this year. If you would like to be included on the running club's email list and receive notices of events, please contact our new Team ACCelerate club chair, Javier Aranda at jaranda@wbhq.com.



ACColades



Linda Drozd was promoted to a Director-level position on Jame's Avery's Executive Team.



Brenna Nava has been promoted to Senior Director on her team at Rackspace.

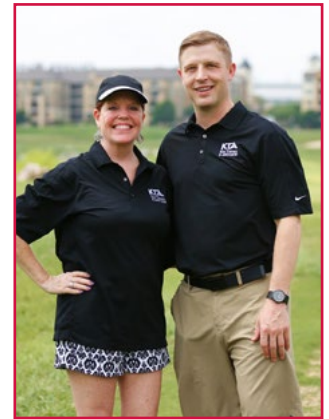
Congratulations to
**ANDEAVOR
AND COUNSEL
MANAGEMENT
GROUP**

for being named as
ACC's 2018
Value Challenge
Award winners!



Have you received a promotion lately? Changed jobs? Do you know of someone who is new to in-house or who deserves a little recognition for a job well done? Please email us at southcentraltx@accglobal.com with your "ACColades" tips.

ACC Golf Tournament



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Family Night with the Missions



Ethics Follies

By Lee Cusenbary, General Counsel of Mission Pharmacal

The Ethics Follies® production, *Being Walter Decent*, is now streaming online for your entertainment and education. Receive two hours Texas Ethics MCLE for \$100 (same as some Texas State Bar CLE, but more entertaining). [For current ACC members, the MCLE is yours for only \$60!]

The *Ethics Follies* is having a great year so far after winning ACC National's Award for Innovative Programming! Our chapter has been asked to present "Ethics Follies 2018 Shyster Act" at the ACC National Convention in Austin, Texas. We have also been asked to present at the National Conference of Bankruptcy Judges and Attorneys in San Antonio and at a special show for ACC New Jersey.

We'd love to have you join us for this exciting year of shows! No experience necessary. We need people to help make simple set pieces, act as stage hands, sing on or off stage, dancers, social marketing, set up a food table for rehearsals, and many other "easy to do" and fun volunteer activities. The networking and fellowship of in-house attorneys is really rewarding. My wife and I have really enjoyed the rehearsals and shows of Ethics Follies for the past 12 years and would love for you and your family to be part of the group as well.

Please let me or Amber know if you'd like to do a little or a lot with Ethics Follies this year. You are very welcomed to join the cast and crew.

Here are the dates for your calendars if you'd like to perform in one or more of the shows:

- » September 13th is the Kickoff Dinner at Dykema Cox Smith at 6 p.m.
- » National ACC Conference at Austin Convention Center on Wed. Oct. 24 at 11 a.m. (90 minute performance)
- » National Bankruptcy Judges Conference in San Antonio on Oct. 30 at 9 a.m. (one hour preview in Convention Center)
- » Empire Theatre Oct. 31 from 2-4:30 and Nov. 1 at 7.
- » ACC New Jersey is Thursday, Nov. 15, 2018 at 6 p.m.

Thanks for your support of The Ethics Follies Committee!

EthicsFollies.com for CLE Registration or show tickets
Benefits The Community Justice Program

ETHICS
Follies

Shyster Act

A Divine Musical Parody



Save the Dates!
Oct. 31 at 2
Nov. 1 at 7

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2 Hours
Ethics CLE
and CPE!

Anonymous Whistleblowers Make Millions for Reporting Their Own Companies to Federal Regulators

By *Ferdose al-Taie, Dykema Cox Smith*

Since 2010, when the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) was signed into law, whistleblowers gained significant financial incentives and protections to report wrongdoing by their companies, officers and directors to federal regulators. Generally, a whistleblower is any person who reveals misconduct by his respective employer or another business or entity. Congress drafted the Dodd-Frank whistleblower framework to mirror the

most successful tip-based cooperation programs in the federal government: cooperating informants in criminal cases prosecuted by U.S. Department of Justice (DOJ), qui tam provisions of the False Claims Act managed by DOJ, and the Internal Revenue Service’s whistleblower reward program. Taking the best structures and protections of each, the Dodd-Frank whistleblower provisions have been wildly successful for the federal government, which requires strict cooperation by

its whistleblowers in exchange for anonymity, immunity and potentially significant financial awards. Under the program, **eligible whistleblowers** are entitled to an award of between 10% and 30% of the monetary sanctions collected in actions brought by the U.S. Securities and Exchange Commission, the U.S. Commodity and Futures Trading Commission, and related actions brought by certain other regulatory and law enforcement authorities.

Dodd-Frank Whistleblower Awards

| Federal Agency | First Award Year | Aggregate Awards to Date | Number of Individuals Awarded | Largest Individual Award | Minimum Sanctions Requirement | Sanctions Percentage for Award |
|---|------------------|--------------------------|-------------------------------|--------------------------|-------------------------------|--------------------------------|
| U.S. Securities and Exchange Commission | 2012 | \$266.31 million | 55 | \$33 million | \$1 million | 10-30% |
| U.S. Commodity Futures Trading Commission | 2014 | \$10.34 million | 3 | \$10 million | \$1 million | 10-30% |

Who is a Dodd-Frank whistleblower?

Dodd-Frank defines a whistleblower as an individual, or two or more individuals acting jointly. Only natural persons, and not corporations, can be whistleblowers. Whistleblowers have no citizenship or residency requirements, so tips come into the Commission from individuals around the globe.

Who is an eligible whistleblower?

An eligible whistleblower is a person who **voluntarily provides** the Commission with original information about a possible violation of federal securities law, including: manipulation of a security’s price or volume; false or misleading statements about a company, including false or misleading SEC reports, financial statements, investor calls, press interviews; insider trading; abusive naked short selling; Foreign Corrupt Practices Act violations (bribery of, improper payments to, or providing things of value to foreign

officials); fraudulent conduct in municipal securities offerings or public pension plans; Ponzi schemes, pyramid schemes, high-yield investment programs; theft or misappropriation of funds or securities; any other conduct that leads to an enforcement action.

Can company lawyers, compliance professionals, auditors and officers be eligible whistleblowers?

Yes, when at least one of these conditions is present: (1) the whistleblower reasonably believes that disclosure to the Commission is needed to prevent substantial injury to the company or investors; (2) the whistleblower reasonably believes that the company is acting in a way that would impede an investigation of these violations; and, (3) at least 120 days have passed since: (a) the whistleblower reported his information internally to the audit committee, chief legal officer or other appropriate official of the company, or

(b) he obtained the information under circumstances indicating that those officials were already aware of the information.

What is “voluntary” information?

The voluntary information requirement is met when a whistleblower (or his counsel) provides his submission before he receives an inquiry, request or demand that relates to the subject matter of the tip provided. Submissions are not deemed voluntary if the whistleblower has a pre-existing legal or contractual duty to provide the information to the Congress, the Commission, the Public Company Accounting Oversight Board (PCAOB), or any self-regulatory organization, such as the Financial Industry Regulatory Authority (FINRA).

What is “original” information?

Original information is: (1) derived from the whistleblower’s **independent knowledge or independent analysis**; (2)

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not already known to the Commission by any other source (if the whistleblower originally provided information to another federal agency which then passed it on to the Commission, this requirement is still met); (3) not exclusively derived from allegations made in certain judicial or administrative hearings, government reports, audits or investigations, or derived from the media—unless the whistleblower herself is a source of that same information.

Independent knowledge is defined as factual information that is not derived from publicly available sources. The whistleblower may have observed the facts herself or gained the knowledge from his experiences or communications. This means that a whistleblower can have independent knowledge despite having learned it second or third hand, as long as the person conveying the information was not a company lawyer, compliance officer or auditor.

Independent analysis is defined as a whistleblower's examination and evaluation he conducted alone or with others of information that might be publicly-available, where his analysis reveals information not generally known or available to the public.

How might whistleblower tips "lead to" a successful action?

A whistleblower's information satisfies this requirement if it causes the Commission to open a new investigation, re-open a previously closed investigation, pursue a new line of inquiry in an existing investigation, and only if the Commission brings a successful enforcement action based at least in part on the information the whistleblower provided.

How much can whistleblowers get awarded for successful tips and where does the money come from?

In order to get an award, the whistleblower's information must lead to a successful Commission action resulting in monetary sanctions of over \$1 million. The Commission can award

a whistleblower between 10% and 30% of the sanctions total, subject to the unique facts and circumstances of the case and the whistleblower himself. These can be wholly individual awards or awards apportioned among several whistleblowers providing the same or similar information.

The Commission may increase award percentages based on: (1) the significance of information provided by the whistleblower to the success of the proceedings; (2) the extent of assistance provided; (3) law enforcement interest in deterring particular securities violations; (4) whether and to what extent a whistleblower participated in a company's internal compliance reporting systems at the same time or prior to reporting to the Commission.

The Commission may decrease award percentages if the whistleblower: (1) was involved or culpable in the wrongdoing he reported; (2) was unreasonably delayed in making his report; or (3) interfered with his company's internal compliance and reporting systems by making false statements to compliance, for example.

Whistleblower awards are not paid from money that would otherwise go to investors. To ensure that whistleblower awards would not diminish the recovery amounts for securities law violations, Congress established the Investor Protection Fund, from which eligible whistleblowers are paid. Both the SEC and the CFTC provide whistleblower reports to Congress that detail financial information for their respective whistleblower programs and investor protection funds on an annual basis.

Is there anyone who does NOT qualify as a Dodd-Frank whistleblower?

Subject to the exceptions already discussed related to lawyers, auditors and compliance personnel. Dodd-Frank prohibits a whistleblower: (1) who is, or was at the time he acquired the original information submitted to the Commission, a member, officer, or employee of certain regulatory agencies, including SEC, CFTC and DOJ; a

self-regulatory organization such as FINRA; PCAOB; or a law enforcement organization; (2) who has been convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award; (3) who gains the information through the performance of a financial audit required by the securities laws; (4) who fails to submit information to the Commission in such form as the Commission may require by rule.

Can whistleblowers really stay anonymous?

Yes, early concerns that the Commission would or could not keep whistleblowers' identities anonymous have been allayed. Both the U.S. Securities and Exchange Commission and U.S. Commodity Futures Trading Association have demonstrated their abilities to keep whistleblowers' identities anonymous. Of the 58 individuals who have received Dodd-Frank whistleblower awards to date, only three are publicly-known, and those three disclosed their own identities after receiving their whistleblower awards.

Whistleblowers who wish to stay anonymous file their claims through counsel. All materials and information are passed through the whistleblower's counsel unless and until the Commission needs to assess the individual whistleblower's characteristics to determine the award percentage and actually make payment. If a matter were to litigate in an administrative or court proceeding, it is possible that a whistleblower's identity would become known because of the likelihood he would be called to testify. As a practical matter, however, whistleblower-involved investigations regularly result in settlement because of the quality of information provided by the whistleblower himself.

What can my company do to stop a whistleblower?

The best way to defend your company is to have an effective and robust securities

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compliance team that allows employees to feel valued and respected for internally reporting wrongdoing. To the greatest extent possible, internal whistleblowers must be given ample information that the issue was resolved or information on why there really was not an issue of concern, to prevent them from externally blowing the whistle. A close adherence to a swift but thorough investigation, remediation and conclusion during the 120-day window is key to protecting the company. Employing outside counsel who build a reporting and resolution system that closely tracks regulatory guidance is important because advice of counsel has been an effective defense for companies charged with securities laws violations by the Commission.

It is very important to remember that employers may not terminate, demote, suspend, harass, or in any way discriminate against a would-be or actual whistleblower. Dodd-Frank expanded the protections for whistleblowers directly and by augmenting the preexisting protections under the Sarbanes-Oxley Act (administered by the Department of Labor). Commission Rule 21F-17(a) makes it plain: “No person may take action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement...with respect to such communications.”

The Commission has spent the last few years bringing stand-alone cases just to sanction employers for: retaliatory conduct; taking actions to impede reporting; taking actions requiring employees to notify employers prior to, or contemporaneously with federal agency reporting; requiring employees to sign separation agreements or employment contracts that remove whistleblower incentives; terminate, harassing or demoting employees will be sanctioned. Indeed, it was a featured priority in 2017, with its successes often touted in the Commission’s annual whistleblower report to Congress. At the Commission’s election, anti-retaliation cases have original jurisdiction in administrative proceedings or federal court, but the Commission has elected to proceed before its own Administrative Law Judges every time.

With the Supreme Court’s opinion in *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (Feb. 21, 2018), the unanimous court resolved a Circuit split when it held that in order to trigger Dodd-Frank’s anti-retaliation provisions, a whistleblower must report directly to “the Commission,” such that an internal report at the company did not qualify that employee for whistleblower status and confer anti-retaliation protections, even though he was terminated for making his report. Digital Realty thus removed any incentive for whistleblowers to report internally before tipping off a federal agency, something that was not necessarily true in the past. Whistleblower counsel are now advising their clients to report directly to the

Commission without any internal reporting, a move that exposed them to discovery by their employers anyway. It is unclear how Digital Realty will affect whistleblowing by company lawyers, auditors and compliance professionals, but most whistleblower counsel are advising those categories of clients to make contemporaneous reports to both the Commission and their companies. If the company resolves the issue within 120 days, there may not be a whistleblower award.



About the author: Ferdose al-Taie’s practice at Dykema spans securities law, white collar criminal defense and antitrust law. Ferdose joined Dykema in June 2017

from the SEC in Washington, DC where she was Senior Counsel in the Division of Enforcement for more than 4 1/2 years. Her federal service also includes more than 4 years at DOJ where she was appointed as: an AUSA in the District of Arizona, a Special AUSA in the Eastern District of Virginia, and a Trial Attorney at the Antitrust Division in Washington, DC. Prior to her federal service, Ferdose worked as an antitrust lawyer for 6 years at two Am-Law 10 firms in Washington, DC. She began her legal career as the Senior Law Clerk to Chief Judge Jerry Buchmeyer in the U.S. District Court for the Northern District of Texas in Dallas.

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