WHISTLE-BLOWING: NOT CHILD’S PLAY FOR INTERNAL AUDITORS
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ENSURING FAIR PLAY FOR WHISTLEBLOWERS
The schoolyard is a funny place. Children of different ages, races, creeds and colours; different attitudes and approaches; different reactions to similar events. It really is the adult world in miniature. In many ways the experiences that we face in our early years are a microcosm of what later life has to throw at us. In fact, when it comes to reacting to bad behaviour and “blowing the whistle”, the adult world bears a striking resemblance to schoolyard behaviour.

In the school yard when something wrong happens, the immediate threat by the victim or another student is, “I’ll tell the teacher!” Sometimes this is a hollow threat but sometimes it is followed through, leading to an investigation of the facts, assessment of the credibility of witnesses and then firm and decisive action.

Then the repercussions begin. The “snitch” might be subject to retribution by the perpetrator. The informant may be looked upon as someone who is not to be trusted, with even the informant’s parents passing the message that it’s “not nice to tell tales”. The teacher will, however, be more aware of the perpetrator and the informant, and this may include protecting the latter, as far as they can, from further retaliation.

In the adult world there is whistle-blowing. In an organization, when wrongdoing is uncovered, employees are encouraged to report it internally or to an independent body. This is followed by an investigation of the facts, an assessment of the credibility of witnesses and then firm and decisive action. Then the repercussions begin. The informant could be sacked or at least marginalized in his or her career. Colleagues may refuse to trust them for fear of further disclosures. The informant’s manager may reflect this in performance appraisals and bonus rewards.

Bullying may occur, not only to the informant but the person who is subject of, or dealing with, the allegation. For example, where the perception is that the case has not been investigated thoroughly, further action by the whistleblower may be taken with more senior managers resulting in reprimands for the initial person who investigated/dealt with the disclosure. Of course there are rules and regulations that protect the identity of the informant and the way they are treated following the whistle-blowing incident, at least as far as they can.

In the middle of this soup of accusations, sometimes weak evidence, desire to do the right thing and personal feelings, is the internal auditor. Often held up as the bastion of good governance and fairness, the internal auditor is expected to ensure fair play and provide assurance that the process allows for a correct conclusion that satisfies all parties.

So what are internal auditors expected to do when presented with the thorny subject of whistle-blowing in an organization? This report attempts to provide a summary of policies and guidance that exist and to suggest some practical tips for internal auditors.

WHISTLE-BLOWING: DEFINITIONS
In the United States, Securities and Exchange Commission Rule 21F-2 (a) defines a whistleblower as “an individual who, alone or jointly with others, provides information to the SEC relating to a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur”.

In the UK, the Employment Rights Act 1996 identifies six outcomes that an employee should consider have occurred, are occurring or are likely to occur and identifies what disclosures should be covered.

From an internal audit perspective the UK Chartered Institute of Auditors’ position paper on whistle-blowing policy states that “Whistle-blowing is when an employee, contractor or supplier goes outside the normal management channels to report suspected wrongdoing at work.”
“Appropriate whistle-blowing procedures are in place and are expected to be utilized by employees without any reprisal, to support effective compliance with the risk management framework; the treatment of whistleblowers is clearly articulated and followed in practice.”


**INTERNAL AUDIT AND WHISTLE-BLOWING**

The importance of appropriate whistle-blowing policies and procedures to the effective discharge of an organization’s corporate governance is significant. Corporate governance is fundamental to effective risk and control within organisations, which means that whistle-blowing policies must be at the heart of internal auditors’ responsibilities.

As an independent assurance function, it is easy for senior management to use internal audit as a vehicle to manage all whistle-blowing traffic. This is not necessarily the right answer. The global standards that govern internal auditors around the world touch on many of the reasons why this is the case.

- **Independence and objectivity (Standard 1100)**
  This states that internal audit activity must be independent and internal auditors must be objective in performing their work. From a whistle-blowing point of view a commitment to “manage” the whistle-blowing process in the organisation may compromise the independence of internal audit. To undertake whistle-blowing investigations, for example, might put internal audit in the role of line management rather than as a vital part of the corporate governance of the organisation.

- **Direct interaction with the board (1111)**
  This standard states that the chief audit executive must communicate and interact directly with the board. This and other reporting requirements in the standards mean that the reporting of the outputs of whistle-blowing reviews needs to be carefully considered. When undertaking a review of the whistle-blowing policies and procedures, the standard auditing approach can be adopted. When investigating specific whistle-blowing allegations, however, especially if board members are implicated, the normal audit route may not be appropriate.

- **Purpose, authority and responsibility (1000)**
  This standard states that the purpose, authority and responsibility of the internal audit activity must be formally defined in an internal audit charter. This also applies to whistle-blowing activity. The organization needs to be clear about the role internal audit will take in whistle-blowing and in sufficient detail to be aware of the methodology to be used. This point is also linked to standards 2030-2040 on Policies and Procedures, which state that the chief audit executive must establish policies and procedures to guide the internal audit activity.

- **Proficiency and Due Professional Care (1200) and Resource Management (2030)**
  These two standards go to the conduct and skill of the internal auditor. Standard 1200 states that engagements must be performed with proficiency and due professional care and Standard 2030 states that the chief audit executive must ensure that internal audit resources are appropriate, sufficient and effectively deployed to achieve the approved plan. For small internal audit teams in particular the nature of whistle-blowing investigations and the level of seniority required to undertake them may stretch resources and the ability to comply fully with this standard.

- **Quality Assurance and Improvement Programme (1300)**
  This standard states that the chief audit executive must develop and maintain a quality assurance and improvement programme that covers all aspects of the internal audit activity. Appropriate review and quality checks of activity concerning whistle-blowing activity is a valuable safety net for appraising findings and recommendations, whether the review has covered all points and what potential challenges might come from recipients.
• **Planning (2010)** This standard states that the chief audit executive must establish a risk-based plan to determine the priorities of the internal audit activity, consistent with the organisation’s goals. The effect that whistle-blowing activity has on planning should not be overlooked. Where individual cases are being investigated, work may need to be undertaken promptly, and to tight deadlines. Cases may arise at very short notice, requiring inconvenient reallocation of resources. In worst-case scenarios the timing and perhaps volume of whistle-blowing cases may require amendments to be made to the annual audit plan, especially for smaller internal audit departments.

**SUGGESTED APPROACH FOR INTERNAL AUDITORS**

In the UK, the Chartered Institute of Internal Auditors (CIIA)’s position paper on whistle-blowing policy, “Whistle-blowing and Corporate Governance – the role of internal auditing in whistle-blowing”, which explains that boards must be accountable for ensuring effective whistle-blowing procedures are in place that guarantee confidentiality and anonymity and avoid conflicts of interest.

The position paper allows for two scenarios. First, where internal audit is directly involved in the procedures for whistle-blowing, the board should ensure that there is an independent mechanism to provide assurance on the effectiveness of those procedures, and secondly where internal audit is playing an indirect role, it should provide assurance on the effectiveness of the system and procedures to the board.

In the discharge of these different approaches what could internal auditors do to ensure their input is effective?

**Indirect involvement**

• **Have an appropriate policy** Organizations should have appropriate policies and procedures for whistle-blowing. In its position paper on whistle-blowing, the UK CIIA identified the following areas as essential to an adequate whistle-blowing policy:
  - addressing concerns and providing feedback;
  - reassuring potential whistleblowers;
  - whistle-blowing to external bodies;
  - commitment, clarity and tone from the top;
  - access to independent advice;
  - openness, confidentiality and anonymity;
  - offering an alternative to line management;
  - structure.

Also in the UK, the Committee on Standards in Public Life has recommended that good whistle-blowing policies should:

• provide examples distinguishing whistle-blowing from grievances;
• give employees the option to raise a whistle-blowing concern outside of line management;
• provide access to an independent helpline offering confidential advice; offer employees a right to confidentiality when raising their concern;
• explain when and how a concern may safely be raised outside the organisation (e.g., with a regulator); and
• provide that it is a disciplinary matter (a) to victimise a bona fide whistleblower, and (b) for someone to make a false allegation maliciously.

• **Corporate governance** The Global Standards (2110) state that the internal audit activity must assess and make appropriate recommendations for improving the governance process in its accomplishment of the following objectives:

  - promoting appropriate ethics and values within the organisation;
  - ensuring effective organisational performance management and accountability;
  - communicating risk and control information to appropriate areas of the organisation; and
  - coordinating the activities of and communicating information among the board, external and internal auditors and management.
The relationship between whistle-blowing and the culture of an organization is crucial. A healthy approach to whistle-blowing, whereby a firm can demonstrate (with evidence) that it has effectively undertaken its duties, points to an organization that has a healthy culture. It is particularly important when considering the reporting mechanisms within an organization and whether these facilitate effective whistle-blowing. Such a culture will allow for independent reporting of whistle-blowing incidents, perhaps to a non-executive, whereas a less developed or sophisticated cultural approach may restrict the whistleblower to external routes such as hotlines.

Internal auditors need to assess how the corporate governance of an organization copes with whistleblowers to be able to determine whether the appropriate culture has been established.

Whistle-blowing culture
The areas that internal auditors may wish to cover here are:

1. The role of the board and audit committee
   The Institute of Chartered Accountants in England and Wales has devised a list of questions that a good audit committee might ask to sense-check their arrangements:
   • Is there evidence that the board regularly considers whistle-blowing procedures as part of its review of the system of internal control?
   • Are there issues or incidents which have otherwise come to the board’s attention which they would have expected to have been raised earlier under the company’s whistle-blowing procedures?
   • Where appropriate, has the internal audit function performed any work that provides additional assurance on the effectiveness of the whistle-blowing procedures?
   • Are there adequate procedures to track the actions taken in relation to concerns raised and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by whistle-blowing?
   • Are there adequate procedures for retaining evidence in relation to each concern?
   • Have confidentiality issues been handled effectively?
   • Is there evidence of timely and constructive feedback?
   • Have any events come to the audit committee’s or the board’s attention that might indicate that a staff member has not been fairly treated as a result of their having raised concerns?
   • Is a review of staff awareness of the procedures needed?

2. Use of management information
   Internal auditors should ensure that the board and senior management get accurate and up-to-date information on the volume and status of whistle-blowing cases. The management information should identify the reason for the event, the progress made with the investigation, the issues that have been found and the progress made to rectify the issues.

3. Contractors and third parties
   In the United States, the extension of Sarbanes-Oxley to contractors poses a number of risks for organisations and internal auditors. For example:
   • Extending internal policies – Internal auditors need to make sure that contractors and sub-contractors have equivalent inclusions in their policies or that an organization’s policies can be applied to the contract firms to afford those individuals the correct amount of protection. This may not be an easy task as definitions within the judgment are still subject to interpretation.
   • Contracts – Contractual relations and processes will need to be reviewed to cater for the wider responsibilities.
   • Disclosure – Appropriate disclosure arrangements will need to be agreed so that the whistleblower is protected but both organizations are still able to manage the process appropriately and deal with subsequent issues.
   • Grievance procedures – It is very important to define what complaints would be handled
by the grievance procedure and what would afford the employee the protections under the whistle-blowing provisions of the Act.

• Legal processes – There may well be an increase in whistle-blowing cases following the ruling and some may be erroneous. Further clarification of the detail of this ruling will only come through further legal cases and it may be that organizations need to reinforce legal resources in order to cater for the potential increase in legal cases.

4. Employee awareness It is important that internal audit gives an opinion on the measures to train and make employees aware of the appropriate channels to invoke a whistle-blowing request. It is fundamental to an adequate whistle-blowing policy that those who have reason to blow the whistle know how to do so. Reporting a whistle-blowing incident may involve reporting concerns to a senior non-executive or to an independent external body. Clear communications demonstrate to the relevant regulator that organizations are engendering a healthy attitude towards whistle-blowing that adds to the evidence that their culture is appropriate.

5. Involvement of other departments, e.g., compliance or general counsel Of course, organisations may elect to delegate responsibility for investigating whistle-blowing incidents to another department, e.g., compliance or general counsel function. In these cases internal audit need to be assured that the procedures for identifying, investigating, reporting and ensuring actions are completed adequately, and are appropriate and robust. Essential to this is whether these departments are independent enough and can thoroughly and promptly investigate specific claims. The risk may be that these departments do not have the mandate to probe sensitive issues comprehensively and therefore do not provide either the whistleblower or the organization with sufficient comfort that claims are being treated seriously and will be acted on.

Direct involvement
• Employ the appropriate skills and resources Whistle-blowing investigations may require experienced internal auditors to undertake detailed forensic testing or sensitive questioning of senior management. Heads of internal audit should ensure that whistle-blowing investigations are allocated to appropriate internal auditors. Where this is not possible, heads of internal audit should consider undertaking the investigation themselves or outsourcing it to a firm that has the relevant skills.

• Ensure security measures adequately protect the whistleblower It is incumbent on the investigations team that information gained during the investigation is kept confidential and stored securely where access can be restricted. Of course the anonymity of the whistleblower is paramount (unless they waive their right) and this will undoubtedly be included at some point in the evidence retained, increasing the need for confidentiality, and from the rest of the internal audit team as well.

• Adopt the correct auditing process A whistle-blowing investigation may not fit with the normal audit methodology for undertaking a routine internal audit. It is good practice to have a separate process for undertaking a whistle-blowing investigation. It helps to keep a structure to what could be a rather fluid task, ensures that all relevant milestones have been covered and should help with time management and budget planning.

• Make sure creditability is retained during interviews As mentioned above, interviews could be with senior management on particularly sensitive subjects. It is important that the correct level of seniority is devoted to these interviews from internal audit. At these interviews, it is recommended that internal auditors discuss the issue at hand in a fluid way. It is unlikely that a checklist approach to interview techniques would garner the appropriate facts. As an alternative, it may be useful to discuss the chronology of specific events where possible, making a note of each stage and seeking evidence of actions/events.
• **Retain evidence properly** As well as keeping evidence secure, it is important that comprehensive evidence is kept of key actions/decisions, etc. Files should be organized logically and evidence of conclusions clearly indicated. There is a good chance that these files will be reviewed either by an external audit or by regulators to make sure whistle-blowing policies have been taken seriously.

• **Ensure clarity during reporting** The final report should be circulated to the board initially and then to appropriate senior management if felt necessary. The report may contain sensitive information, hence the two-stage reporting process. If one of the board is implicated, then a steer from the chairman, or the chair of the audit committee, should be taken about his/her attendance at the meeting. Good protocol would be to address any specific issues with them prior to circulation of the report and allow their comment to be captured in the report. Again, if this is with a director or equivalent, the chairman’s advice may be taken about whether he needs to be included.

• **Format of report** The normal audit report may not be appropriate for a whistle-blowing investigation. A separate format may be devised to make reporting as clear and concise as possible. It may be useful to adopt a format that allows the internal auditor to present the facts chronologically and then draw conclusions from that.

• **Guard against overlap with the HR grievance process** An organization’s whistle-blowing policy should manage the boundaries between a true attempt to blow the whistle and a grievance between colleagues or between an employee and the company. At times, these issues can become intertwined, but whereas one is subject to whistle-blowing protocols, the other is dealt with by HR policy. A clear steer should be given about how each is dealt with and, where issues cross boundaries, what is to be done and by whom.

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**THE RISING TIDE OF WHISTLE-BLOWING**

“Whistleblowers are becoming bolder, whether motivated through conscience or fear.”

Dr Ian Peters, chief executive of the UK Chartered Institute of Internal Auditors, Foreword to “Whistle-blowing and Corporate Governance”, January 2014.

With the heightened focus on whistle-blowing since before the financial crisis, the number of cases around the world has increased. For example, the U.S. Securities and Exchange Commission reported that in the fiscal year 2013, 3,238 whistleblower requests were received, up by 8 percent from 3,001 in the fiscal year 2012. The most common complaint categories reported by whistleblowers in 2013 were corporate disclosures and financials (17.2 percent), followed by fraud (17.1 percent) and manipulation (16.2 percent).

Across the Atlantic, the UK Financial Conduct Authority has seen a 38 percent rise in whistle-blowing reports. Reports averaged around 338 a month in the previous year, whereas the FCA has seen around 467 a month in the past year. Sixty percent of cases were about general regulatory concerns, four reports concerned the alleged misappropriation of client money, 23 insider trading, 21 market manipulation and 25 cases related to money laundering. The FCA said that it had opened 72 percent more investigations during 2013 based on information from whistleblowers than its predecessor in the previous 12 months.

This level of activity will no doubt continue. There is a growing link between whistle-blowing and conduct risk. As regulators around the world clarify and progress their conduct and cultural messages, a positive practical approach to whistle-blowing in a firm will be taken as a strong indicator that all is well with the culture, whereas poor practices may well not only be seen as an indicator of poor culture but might also lead to greater regulatory scrutiny.
This will focus more attention on the role of internal audit. The increase in numbers may well be partly attributable to internal audit’s more intense involvement in the whistle-blowing process (although this is difficult to prove with the information available at time of writing). Internal auditors need to assess the risk that whistle-blowing poses to their firm and their function and select an approach that best offsets that risk. In a survey undertaken by the UK CIIA, 41 percent of respondents reported that internal audit had day-to-day responsibility for whistle-blowing arrangements, but only two-thirds of respondents believed their arrangements to be effective.

And a final word about schoolyard behavior: As children mature and leave juvenile behaviour behind, there is a good chance that they will turn into intelligent, reasonable, well-rounded adults. It is to be hoped that this is also true in business life (in particular the financial services industry) and that conduct and culture within organizations improve so much that the need for whistle-blowing declines.

**REPORTING WRONGDOING AROUND THE WORLD - WHISTLE-BLOWING ACROSS BORDERS**

A further consideration for inclusion in a policy is the accommodation of whistle-blowing cases from different jurisdictions (i.e., cross-border). As many countries have their own whistle-blowing laws and regulations and in this ever-globalised world, it looks more and more likely that whistle-blowing cases will start to originate from other countries. This may lead to confusion as to what rights the whistleblower has and the process that needs to be invoked (among other things). It is important that an organization’s whistle-blowing policy clarifies these points. For example, in the United States, the Commodity Futures Trading Commission (CFTC)’s whistleblower rules establish a procedure for whistleblowers to report any violations of the Commodity Exchange Act. The impact of this requirement may trigger a “cross-border” issue when it relates to a foreign market participant.

There has been significant focus on whistle-blowing in many jurisdictions around the world because of its importance to good governance within organisations. A summary of the status of a selection of different countries’ approaches is included below:

**EUROPE**

Only four European Union countries have legal frameworks for whistleblower protection that are considered to be advanced.

**ASIA**

In China, a 24-hour corruption hotline reporting system has been established, and encompasses many government entities including the Public Security Bureau, the State Administration for Industry and Commerce and various court and prosecution departments.

**AMERICA**

In March 2014, the U.S. Supreme Court ruled that the whistle-blowing provisions in the Sarbanes-Oxley Act of 2002 should be expanded to employees of private contractors and sub-contractors of public companies.

**AUSTRALIA**

In Australia, there are whistleblower protections in a number of pieces of legislation, but the degree to which they are used is unclear.

**AFRICA**

The South African government has indicated its support for the concept of whistle-blowing and has acknowledged the need to offer legal protection to whistle blowers with the introduction of the Protected Disclosures Act, called the Whistleblowers Act.
Europe
In November 2013 a Transparency International report on the state of whistle-blowing in European countries concluded that only four European Union countries had legal frameworks for whistleblower protection that were considered to be advanced: Luxembourg, Romania, Slovenia and the United Kingdom. Of the other 23 EU countries, 16 have partial legal protections for employees who come forward to report wrongdoing. The remaining seven countries have either very limited or no legal frameworks. Several EU countries in recent years have taken steps to strengthen whistleblower rights, including Austria, Belgium, Denmark, France, Hungary, Italy, Luxembourg, Malta, Romania and Slovenia. Countries that have issued proposals or have announced plans for proposed laws include Finland, Greece, Ireland, the Netherlands and Slovakia.

UK
In the UK, employment protections for internal whistle-blowing are contained in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) (PIDA). This Act covers nearly all employees in the government, private and non-profit sectors. The law also legally protects contractors, trainees and UK workers based overseas. The provisions introduced by the Public Interest Disclosure Act 1998 protect most workers from being subjected to a detriment by their employer. Detriment may take a number of forms, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered. Employees who are protected by the provisions may make a claim for unfair dismissal if they are dismissed for making a protected disclosure.

In the 1990s the whistle-blowing charity Public Concern at Work (PCW) was established and it has been at the forefront of developments in whistle-blowing in the UK ever since. In November 2013 Public Concern at Work (together with EY) undertook a comprehensive survey of UK whistle-blowing policies. The survey found that 93 percent of respondents said they had formal whistle-blowing arrangements in place but a third thought their whistle-blowing arrangements were ineffective. Fifty-four percent said they did not train key members of staff designated to receive concerns. Forty-four percent confused personal complaints with whistle-blowing and in 10 percent of cases respondents said their arrangements were not clearly endorsed by senior management.

In March 2014, the National Audit Office (NAO) issued its report on the state of whistle-blowing in UK government departments. It reported that more could be done to improve the whistle-blowing arrangements. The NAO’s main findings were that there was no strategic cross-government lead for whistle-blowing; that internal “checks and balances” could be better exploited; and that some systems were more mature than others when collecting, coordinating and disseminating intelligence.

“You only have to look at my committee’s work on everything from GP out-of-hours services to tax avoidance to see how vital whistleblowers are to protecting taxpayers’ money. It is extremely worrying therefore that half of workers stay silent about misconduct, possibly because they fear what will happen if they speak out. Government must do more to support those workers that try to protect taxpayers’ money.”

A statement from Rt Hon Margaret Hodge, chair of the Committee on Public Accounts, UK, March 2014

In financial services, the Financial Conduct Authority’s whistle-blowing requirements are set out in Chapter 18 of the Senior Management Arrangements, Systems and Controls sourcebook of the FCA Handbook. These encourage firms to adopt appropriate internal procedures that will guide staff to blow the whistle internally about matters that are relevant to the functions of the FCA. SYSC 18.2.2 provides guidance on the types of internal procedures that may be appropriate for larger firms as well as smaller firms.
In October 2013 the FCA provided its response to the Parliamentary Commission on Banking Standards. The commission, in its report on standards of behaviour in the banking industry, concluded that not only did internal compliance and formal control structures fail to uphold proper banking standards, but that a culture of fear prevented employees from speaking out about serious wrongdoing. The FCA agreed with the commission recommendations and has undertaken to consult, in 2014, on whether additional rules are needed to set minimum standards for whistle-blowing and how prescriptive these should be. This consultation will include the proposal that a member of a firm’s senior management is made personally accountable for whistle-blowing procedures.

“Formal whistle-blowing practices play an important role in creating this culture but should not be a first port of call. If staff have a good understanding of conduct standards, and feel secure about speaking out, they will inform senior management when they see malpractice occurring, through both informal and formal channels.”

From the FCA’s response to the Parliamentary Committee on Banking Standards, UK, October 2013.

**United States**

The United States has had whistle-blowing laws since as long ago as the 1800s. More recently whistleblowers appeared in the Sarbanes-Oxley Act of 2002, primarily in § 806. This makes it unlawful for corporate issuers and various persons who work for them or do business with them, to retaliate against persons reporting violations of the U.S. securities laws or other U.S. laws prohibiting corporate fraud. Section 806 applies to companies that have a class of securities registered under § 12 of the Securities Exchange Act of 1934, as amended, or that are required to file reports under § 15(d) of the Exchange Act. Section 806 also creates a cause of action in favour of persons who have been subjected to retaliation.

In addition § 301 of Sarbanes-Oxley requires audit committees of firms that issue securities listed in the U.S. to adopt procedures for handling complaints about a company’s financial reporting, especially anonymous or confidential complaints.

Under Sarbanes-Oxley if a firm employs a third party e.g. an accountancy firm to investigate a whistle-blowing incident the firm must report this to the SEC.


The Securities and Exchange Commission’s whistleblower rules came into effect on August 12, 2011. The SEC will pay an award to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the U.S. securities laws that leads to a successful enforcement action, examples of successful enforcement actions and incentives to use internal compliance mechanisms.

In March 2014, the U.S. Supreme Court ruled that the whistle-blowing provisions in the Sarbanes-Oxley Act of 2002 should be expanded to employees of private contractors and sub-contractors of public companies. This means that those employees will be protected by the whistleblower provisions contained in the Act. This potentially includes lawyers and accountants of a firm but the actual defined scope includes those “whose performance will take place over a significant period of time”.

It will, however, only be possible to raise a complaint arising from the contractor’s “fulfilling its role as contractor for the public company, not the contractor in some other capacity”.
“The new whistleblower program is a part of our effort to enhance the agency’s capacity to detect and prevent fraud. The proposed final rules build upon our efforts over the past two years and our experience with the Sarbanes-Oxley Act — an Act that made great strides in creating whistleblower protections and requiring internal reporting systems at public companies. From that experience, we learned that despite Sarbanes-Oxley, too many people remain silent in the face of fraud. Today’s rules are intended to break the silence of those who see a wrong.”


Case 1 - On August 21, 2012, the SEC announced its first whistleblower award. In that instance, the whistleblower helped the Commission stop a multi-million dollar fraud. The whistleblower provided documents and other significant information that allowed the investigation to move at an accelerated pace and prevent the fraud from ensnaring additional victims. During Fiscal Year 2013, the Commission made three more payments to this whistleblower in connection with additional amounts that had been collected by the Commission in the underlying enforcement action.

Case 2 - On June 12, 2013, the SEC announced it had issued an award to three whistleblowers who helped the Commission shut down a sham hedge fund. Two of the whistleblowers provided information that prompted the Commission to open the investigation and stop the scheme before more investors were harmed. The third whistleblower provided independent corroborating information and identified key witnesses. On August 30, 2013, the Commission announced it had approved payouts to each of the three whistleblowers in connection with money that had been collected in a related criminal proceeding.

Case 3 - In October 2013, the SEC announced an award of more than $14 million to a whistleblower whose information led to an SEC enforcement action that recovered substantial investor funds.

In addition most U.S. federal and state government entities have mechanisms for reporting fraud and abuse, and some provide awards for whistleblowers. These range from New York State’s False Claims Act, which provides whistleblower awards similar to awards offered under the U.S. False Claims Act; to the New York State Office of the Attorney General’s General, Immigration Fraud, Healthcare and Medicaid Fraud hotlines; to the U.S. Environmental Protection Agency’s Fraud, Waste, and Abuse Hotline; to the Montgomery County, Pennsylvania, Controller’s Office’s Fraud & Abuse Tipline.

“In October 2013, the SEC announced an award of more than $14 million to a whistleblower whose information led to an SEC enforcement action that recovered substantial investor funds.

“During the year, the Office paid whistleblowers a total of over $14 million in recognition of their contributions to the success of enforcement actions pursuant to which ongoing frauds were stopped in their tracks. While the amounts paid are significant, the bigger story is the untold numbers of current and future investors who were shielded from harm thanks to the information and cooperation provided by whistleblowers. At the end of the day, protecting investors is what the whistleblower programme is all about.”

Foreword to the 2013 Annual Report to Congress on the Dodd-Frank Whistleblower Programme, Sean X McKessy, chief, Office of the Whistleblower.
**Australia**

In Australia, there are also whistleblower protections in a number of pieces of legislation, for example, the Banking Act 1959 (Cth), the Insurance Act 1973 (Cth), the Life Insurance Act 1995 (Cth) and the Superannuation Industry (Supervision) Act 1993 (Cth).

In 2004, Part 9.4AAA of the Corporations Act 2001 was introduced after a report by the Australian Prudential Regulation Authority (APRA). It included detailed whistle-blowing provisions that required an officer, employee or contractor to be a protected whistleblower provided that:

- pre-disclosure identification is given;
- reasonable grounds for suspecting breaches of the Corporations Act, or the relevant court rules are established;
- the allegations are made in good faith; and
- disclosures are made to the Australian Securities and Investments Commission (ASIC), the company’s auditors, a director, secretary or senior manager or a nominated person.

A protected whistleblower will have protection against retaliation, defamation or any other civil or criminal liability for making the allegation. A protected allegation must be handled in a certain way. It can be passed on to ASIC, APRA or the Australian Federal Police without the whistleblower’s consent, but only to someone else with consent.

Although whistleblower protections exist in Australia, the degree to which they are used is unclear. For example, the Australian Securities and Investments Commission and the Reserve Bank of Australia have been criticized for how they deal with whistleblowers and conducting timely investigations on the back of allegations.

**Case 4 – Securancy –** In Australia whistle-blowing allegations led to charges being brought against two subsidiaries of the Reserve Bank of Australia, NPA and Securency, as well as six former banknote executives, regarding the payment of bribes to foreign officials to win banknote supply contracts.

**China**

In China a 24-hour corruption hotline reporting system has been established, and encompasses many government entities including the Public Security Bureau, the State Administration for Industry and Commerce and various court and prosecution departments. The Administrative Supervision Law and the Chinese Communist Party (CCP) Internal Supervision Rules set out rules for whistle-blowing. Specifically, the Ministry of Supervision is the authority charged with investigating governmental officials’ compliance with the relevant anti-corruption rules. The Disciplinary Commission is an internal agency of the CCP that supervises and investigates CCP members’ compliance with the anti-corruption rules.

**South Africa**

“The South African government has introduced the Protected Disclosures Act, also called the Whistleblowers Act. The Act states that employees can report unlawful or irregular conduct by employers and fellow employees, while receiving protection from “occupational detriment” by employers when making certain “protected disclosures”.

Section 159 (Protection for whistle blowers; item 7) also states: “A public company and state-owned company must directly or indirectly 1) establish and maintain a system to receive disclosures (contemplated in this section) confidentially, and act on them; and 2) routinely publicize the availability of that system to the categories of persons contemplated (in subsection 4).”
The Thomson Reuters Governance, Risk & Compliance (GRC) business delivers a comprehensive set of solutions designed to empower audit, risk and compliance professionals, business leaders, and the Boards they serve to reliably achieve business objectives, address uncertainty, and act with integrity.

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