WILLKIE FARR & GALLAGHER LLP

CLIENT MEMORANDUM

KEY PROVISIONS OF THE DODD-FRANK ACT BROADLY IMPLICATE FCPA COMPLIANCE ISSUES, REWARD WHISTLEBLOWING FOR SECURITIES LAW VIOLATIONS, AND REQUIRE REPORTS OF CERTAIN FOREIGN PAYMENTS

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act"), signed by President Obama on July 21, 2010, not only mandates a sweeping overhaul of financial services regulations but also includes several provisions that may significantly affect the operations of businesses outside the financial sector, notably their compliance under the Foreign Corrupt Practices Act ("FCPA").

- The Dodd-Frank Act will protect and reward whistleblowers who voluntarily provide information to the Securities and Exchange Commission relating to a violation of the securities laws which results in a fine or penalty for the violator of more than one million dollars.

- The Act also requires issuers in the oil, gas, and mineral extraction industries to include in their corporate annual reports information regarding certain royalty, licensing, and other payments made to the U.S. and foreign governments in connection with the issuers' resource extraction activities. This provision was included at the request of international non-governmental organizations seeking more transparency regarding income received by governments in less developed countries from their oil, gas, and mining resources.

New Whistleblower Rewards and Protections

Under the Dodd-Frank Act, whistleblowers who voluntarily provide "original information" to the SEC leading to the successful enforcement of the securities laws through a judicial or administrative action generally will be entitled to a reward representing a portion of the resulting monetary sanctions imposed on the violator when the monetary sanctions exceed one million dollars.[1] This provision has already taken effect: a whistleblower may obtain a reward for information submitted after July 21, 2010, even if the alleged violation occurred before that date.

To qualify for a reward, the information must be derived from the whistleblower's independent knowledge or analysis and not otherwise known to the SEC from any other source. The specific amount of the reward is within the SEC's discretion but must fall between 10 and 30 percent of the total monetary sanctions collected as a result of the enforcement action arising from the information. The amount of the reward will be determined based on the penalties collected,

[1] The Dodd-Frank Act also includes similar provisions for whistleblowing with respect to violations of the Commodity Exchange Act.

monies obtained through disgorgement, and the significance of the information to the success of the action, among other factors. Under certain circumstances, a whistleblower also may be entitled to a portion of any monetary sanctions resulting from an action brought by other regulatory or criminal enforcement agencies if the action is based on the same original information provided by the whistleblower to the SEC. The Act generally prohibits rewards for wrongdoers or regulatory and law enforcement personnel. It also protects whistleblowers from public exposure and employer reprisals.

The new provision potentially affects any firm subject to U.S. securities laws. Based on fines imposed in recent FCPA enforcement actions, the potential monetary rewards for whistleblowers provide an enormous incentive to report alleged acts of foreign corruption to the SEC. Such significant financial rewards for whistleblowers underscore the need for effective compliance programs to prevent, or detect in a timely way, possible FCPA violations. The provision also creates a significant new variable—i.e., potential whistleblower claims by financially self-interested employees—in the already difficult calculus companies must make in deciding whether to voluntarily disclose alleged FCPA violations to government regulators.

Disclosure of Payments by Resource Extraction "Issuers"

The Dodd-Frank Act requires additional reporting by U.S. and foreign issuers engaged in the commercial development of oil, natural gas, or minerals. The provision covers exploration, extraction, processing, export, and "other significant actions" relating to oil, natural gas, or minerals, or the acquisition of a license for any of these activities.

This provision of the Act will take effect following publication of implementing regulations by the SEC no later than April 2011. Thereafter, affected issuers will be required to include in their annual reports information regarding certain payments made by the issuer, its subsidiaries, and any other entity under its control to the U.S. government or foreign governments to further the commercial development of oil, natural gas, or minerals. Such payments include taxes, royalties, fees (including licensing fees), production entitlements, bonuses, and other "material benefits" that are "not de minimis" and that the SEC determines are "part of the commonly recognized revenue stream for the commercial development" of those natural resources.

Affected issuers will be required to report the type and amount of any such payments on a project-by-project basis. The information must be submitted in an "interactive data format" according to the requirements set forth in the Act and to be further defined by the SEC in its regulations. There is no confidentiality protection for the information supplied even though, for some companies, the release of information "by project"—which companies may consider proprietary in nature—could benefit competitors. In addition, the SEC is required to make available to the public a "compilation" of the information "to the extent practicable."

Preparing for Compliance

The new whistleblower provisions will require all companies subject to U.S. securities laws to maintain rigorous systems to prevent and detect potential violations and to address proactively—through investigation and remediation—any issues that arise. Issuers involved in the extractive industries should review their recordkeeping systems—as well as those of their subsidiaries and other controlled entities—to make sure they will be able to report the pertinent governmental payments accurately and in a timely manner when the new disclosure requirement takes effect.

* * * * * * * * * * * * * * *

If you have any questions concerning the foregoing or would like additional information, please contact Martin J. Weinstein (202-303-1122, mweinstein@willkie.com), Robert J. Meyer (202-303-1123, rmeyer@willkie.com), Jeffrey D. Clark (202-303-1139, jdclark@willkie.com), Russell L. Smith (202-303-1116, rsmith@willkie.com), or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

July 26, 2010

Copyright © 2010 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York's Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.