

by Donna Boehme

Looking for whistleblowers in all the wrong places

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That was fast. An early test of the new Dodd-Frank whistleblower rules has arrived via a small whistleblower group, recruited by Harry Markopolos (of Madoff fame), alleging systematic FOREX fraud by two banks, BNY Mellon and State Street. The DOJ



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and a posse of state attorneys general are looking for \$2 billion in clawback, for starters. The group may earn up to 25% of the penalties collected under state false claims statutes, and between 10-30% under Dodd-Frank.

Does this portend a “new breed” of whistleblower in the making—one that is not born from outrage at an observed misconduct, but recruited from without by expert investigators? According to a new Congressional report, the SEC’s cup runneth over: 334 tips filed during the first 7-week effective period. Time will tell.

Most interesting is the little nugget that the bank lawyers had been “looking for the whistleblower.” What were they planning to do when they found this guy? I think it’s a safe bet that they weren’t hunting him down for a group hug. Apparently, they were searching high and low for the culprit, not realizing that trader Grant Wilson sat 400 miles away

from headquarters in Pittsburg, Pennsylvania, secretly gathering information with a cadre of investigators, lawyers, regulators—and his friend Harry.

Yeah, that’s every CEO’s worst nightmare, and it may be a vivid example of what Dodd-Frank detractors loudly warned against: that employees might wait in the tall grass while a fraud “cooks,” instead of reporting it promptly to management, depriving the company of the opportunity to address problems internally.

A few other observations. First, it’s illuminating when a company’s immediate instinct is to “find the snitch.” You’d think they’d be marshalling a small army to investigate the allegation, stop any misconduct, and fire the evildoers. Instead, Job One seems to be “stop the whistleblower.”

We can discuss Legal’s mandate to protect the company, but this is a prime example of why the chief ethics and compliance officer must be high-level, independent of Legal, and have direct unfiltered access to the Board. Because Compliance protects the company too, just differently, by helping it to detect and prevent misconduct (and protecting internal whistleblowers).

Finally, while the notion of Markopolos cold-calling a trader to incite a random act of whistleblowing might be disquieting, it’s exactly the way the system was designed to work—offering incentives to uncover fraud where companies have failed to detect it themselves. And isn’t that what we all want? *

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