

CLIENT ALERT

SEC Ramps Up Dodd-Frank Enforcement by Scrutinizing Confidentiality and Financial Award Restrictions

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The [Wall Street Journal](#) (subscription required) reported late last week that the SEC recently sent letters to several publicly-traded companies, demanding they turn over five years' worth of non-disclosure agreements, employment agreements, severance and release agreements, and other related documents. The SEC is apparently seeking documents that arguably restrict an employee's or former employee's ability to disclose information to the SEC as part of an investigation into alleged violations of the securities laws. The requests allegedly also seek copies of any agreements or other documents that attempt to restrict the ability of employees or former employees to participate in any recovery or settlement they would otherwise be entitled to under the Dodd-Frank Act, as well as lists of employees who have been terminated.

The SEC's letters follow on the [2014 edition](#) of its annual report on its whistleblower program in which the agency stated that it was "working to identify employee confidentiality, severance, and other kinds of agreements that may interfere with an employee's ability to report potential wrongdoing to the SEC."

It is unclear what the SEC intends to do with this information. However, the SEC may take a page out of the Equal Employment Opportunity Commission's (EEOC) playbook. The EEOC has sued several companies in recent years claiming, among other things, that their severance and release agreements improperly prohibit employees from participating in an EEOC investigation or filing an EEOC charge. To date, the EEOC has been largely unsuccessful in this litigation, including a [highly publicized case against CVS](#) that was dismissed last October. The EEOC is appealing this decision.

Despite the EEOC's lack of success to date, publicly-traded companies should closely monitor the SEC's initiative. The SEC takes the position that employees cannot waive a financial recovery associated with a Dodd Frank investigation. Companies that have not received one of the SEC's letters should review documentation that might be the subject of a similar SEC inquiry. Companies may wish to consider modifying relevant documents, including severance, release, and non-disclosure agreements, to exempt any prohibition against reporting potential wrongdoing to government agencies and to remove any waivers of the right to participate in the whistleblower award provisions of Dodd-Frank.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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