PART ONE

The Whistleblowers and the Dodd-Frank Incentives

CHAPTER ONE

The Dramatic Expansion of Whistleblower Awards under Dodd-Frank

ON JULY 23, 2010, the Securities and Exchange Commission (SEC) announced an award of $1 million to Glen Kaiser and Karen Kaiser (formerly Karen Zilkha) of Southbury, CT, for providing information on alleged illegal insider trading in Microsoft Corp. by a hedge fund advisor (Pequot Capital Management, Inc.); its chief executive, Arthur J. Sanberg; and David E. Zilkha. Mr. Zilkha was previously a Microsoft employee who was married to Karen and who accepted an employment offer at Pequot. Karen subsequently married Glen Kaiser, an anesthesiologist. While Pequot was in the process of hiring him, Mr. Zilkha allegedly tipped Pequot and Sanberg about an upcoming earnings report from Microsoft that indicated that the company would beat its earnings target. Sanberg allegedly traded on this inside information, reaping $14.8 million in profits, and the SEC won a judgment (including interest) against Pequot and Sanberg for $17,938,468. Documents in the Zilkhas' divorce proceedings revealed that Pequot agreed to make a $2.1 million payment to David Zilkha several years after his departure from Pequot in November 2001.[1]

How did Karen Kaiser uncover the specific evidence that resulted in her $1 million award? When Karen and David Zilkha divorced, Karen had kept the hard drive from the family's computer because it contained family photos.

During the divorce and child support proceedings, David Zilkha listed a $2.1 million settlement that had never appeared before in any of his affidavits to the court. Karen's attorney searched the hard drive to try to find the origin of the $2.1 million and discovered that the payment came from Pequot. Also on the hard drive were the e-mails from a Microsoft employee to Mr. Zilkha, which indicated that he had advance notice that Microsoft would beat its earnings target. These e-mails were turned over to the SEC, which earlier had closed its investigation of Pequot. On the basis of these e-mails, the SEC decided to reopen the investigation.[2]

The reward to the Kaisers preceded the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Under Dodd-Frank, Glen Kaiser and Karen Kaiser would have received a minimum of 10 percent of the recovery or $1,793,847 to a maximum of 30 percent of the recovery, or $5,381,540. Congress decided that the SEC was not being generous enough to whistleblowers and "mandated" much higher rewards and extended the bounty program beyond illegal insider trading violations to any violation of the federal securities laws. This decision was influenced by the failure of the SEC to uncover the Madoff Ponzi scheme for more than 20 years after investors had been bilked of approximately $65 billion. Dodd-Frank also mandated the payment of such bounties that were "discretionary" prior to its enactment.

The theory for the bounties is that people will not reveal frauds unless there is something in it for them. Laura Goldman, a money manager who claims to have figured out the Madoff fraud in about 45 minutes, justified her not blowing the whistle in this way: "People on Wall Street are not Mother Teresas. They are not going to the S.E.C. unless there is something in it for them."[3]

Harry Markopolos, a quantitative financial analyst, first blew the whistle on Bernard Madoff's multibillion-dollar Ponzi scheme in 2000 and, over the ensuing eight years preceding Madoff's arrest, sent detailed accusations to various SEC offices. Each report met with a thundering silence. Markopolos's investigation started when his bosses at the money management firm he worked for wanted him to design a financial product that was as consistently profitable and low risk as the one offered by Madoff. It took Markopolos only a few minutes to study Madoff's supernaturally consistent rate of return and "investment strategy" to realize it was most likely a fraud.

To get his bosses off his back about creating a similar product, Markopolos had to get the SEC to put Madoff out of business. It is not surprising that the SEC ascribed Markopolos's initial and subsequent accusations to that of a jealous competitor trying to tear down a more successful rival, one who had formerly headed the Nasdaq Stock Market. Markopolos's utterly tone-deaf and

repeated requests to be paid a bounty if Madoff's fraud qualified under whistleblower statutes didn't help his credibility either. Markopolos never received a bounty from the SEC, but he did get a book deal after the Madoff scandal was publicized.[4]

WHISTLEBLOWER PROVISIONS OF DODD-FRANK

Prior to Dodd-Frank and the 2006 amendments to the Internal Revenue Code, whistleblower rewards were pretty much limited to the violations of the False Claims Act, similar state statutes, and miscellaneous other laws described in Chapter 10. The False Claims Act basically required that there be a false claim against a government, such as Medicare or Medicaid fraud.

Dodd-Frank greatly expands the violations for which a whistleblower bounty may be awarded. This chapter reviews the broad scope of Dodd-Frank. The last chapter of this book and Appendixes 2 through 4 describe, in detail, how whistleblowers can obtain rewards under the SEC bounty program mandated by Dodd-Frank.

Under Dodd-Frank, whistleblowers who provide "original information" (discussed later) leading to a successful enforcement action by a judicial or administrative body under the securities and commodities laws receive not less than 10 percent or more than 30 percent of the total recovery "ordered to be paid" if it is greater than $1 million, including penalties, disgorgement,[5] and interest. The SEC was required to implement whistleblower provisions by rules and regulations described in detail in Chapter 11 of this book.

Thus, the minimum bounty a whistleblower can receive is effectively $100,000. However, the maximum jackpot is enormous. For example, Siemens paid $800 million for violation of the Foreign Corrupt Practices Act (FCPA), which is part of the securities laws. Had original information been given to the SEC that led to the recovery from Siemens, the whistleblower could have collected a minimum of $80 million and a maximum of $240 million. That amount is a lot higher than any state lottery normally provides, and the odds are a lot better than the state lottery. Other groundbreaking settlements for violation of the FCPA include a $579 million sanction and disgorgement against Kellogg Brown & Root LLC (part of which was paid by Halliburton Co.), a $365 million payment by Snamprogetti Netherlands B.V. and its parent, and a $185 million payment by Daimler AG.

The drafters of Dodd-Frank believe that the SEC had not been sufficiently generous in the past to whistleblowers. Indeed, it had paid less than $160,000

TABLE 1.1 Bounty Payments to Whistleblowers

Bounty Claimant	Year	Bounty Amount
Claimant 1	1989	$ 3,500
Claimant 2	2001	$ 18,152
Claimant 3	2002	$ 29,079
Claimant 4	2005	$ 17,500
Claimant 4	2006	$ 29,920
Claimant 4	2009	$ 55,220
Claimant 5	2007	$ 6,166
Total		$159,537

Source: Generated by the Office of the Inspector General.

in total since 1989, excluding the $1 million payment to the Kaisers. This poor bounty payment history is illustrated in Table 1.1.[6]

WHAT IS "ORIGINAL INFORMATION"?

To hit the jackpot under Dodd-Frank, the whistleblower must provide what is called "original information." This means information that:

- Is derived from the independent knowledge or analysis of a whistleblower;
- Is not known to the SEC from any other source, unless the whistleblower is the original source of the information; and
- Is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.[7]

A potential whistleblower will likely need the assistance of an attorney, preferably one specializing in securities law, to identify what is original information and then submit the information to the SEC. In the Karen Kaiser case, it was an attorney working on her divorce and property settlement who discovered the damaging information.

A whistleblower is not entitled to an award if the whistleblower knowingly and willfully makes any false, fictitious, or fraudulent statement or

representation or uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry. Likewise certain compliance personnel are not eligible, as described more fully in Chapter 11.

WHAT ARE VIOLATIONS OF THE FEDERAL SECURITIES LAWS?

The federal securities laws contain numerous provisions that can be violated and can result in monetary sanctions[8] exceeding $1 million. Keep in mind when reading this chapter that any violation of these provisions resulting in monetary sanctions exceeding $1 million can produce a reward for a whistleblower who provides the SEC with "original information."

Some of the more important provisions and examples of how they have been violated in the past are discussed next.

FCPA Violations

Generally speaking, the Securities Exchange Act of 1934 (1934 Act) makes it illegal for any public company, as well as any officer, director, employee, or stockholder acting on behalf of the company, to pay, promise to pay, or authorize the payment of money or anything of value to:

- Any official of a foreign government or instrumentality of a foreign government;
- Any foreign political party;
- Any candidate for foreign political office; or
- Any person whom the company knows or has reason to know will make a proscribed payment or will promise to make or authorize payment of a proscribed payment

if the purpose is to induce the recipient to: (a) use his or her influence with the foreign government or instrumentality; (b) influence the enactment of legislation or regulation by that foreign government or instrumentality; or (c) refrain from performing any official responsibility, in each case, for the purpose of obtaining or retaining business for or with, or directing business to any person.[9]

In order to fall within the 1934 Act's proscriptions, the payment, or promise or authorization of payment, must be "corrupt"; that is, whether it is legal under the laws of the foreign jurisdiction or not, it must be intended to induce the recipient to use his or her official position for the benefit of the person offering the payment or his client. The 1934 Act prohibits not only the payment of, but also the promise or authorization of, a corrupt foreign payment. Therefore, the law can be violated even if the payment is never in fact made. Since a corrupt payment that is requested by the foreign official (rather than offered to him or her) involves a decision to accede to the request, it is not a defense that the payment was requested. However, payments that are extorted and are made to protect physical assets from capricious destruction are not within the ambit of the 1934 Act. In addition, so-called grease payments (e.g., payments to ministerial or clerical employees of foreign government or agencies, to speed them in the performance of or encourage them to in fact perform their duties) are not prohibited by the 1934 Act.

It is clear that, if authorized, the making of a foreign corrupt payment by a foreign subsidiary of a U.S. company is prohibited by the 1934 Act. Also prohibited are payments to an agent (even one who is not him- or herself subject to the 1934 Act) when it is known or should be known that they will be used to make corrupt payments.

Violations of the corrupt payment provisions of the 1934 Act are punishable by fines and civil penalties against corporations or business entities of up to $2 million ($10,000 civil penalty in an action brought by the SEC). In addition, officers, directors, employees, agents, and shareholders can be fined up to $100,000 (plus a $10,000 civil penalty in an action brought by the SEC) or imprisoned for not more than five years, or both, for violations of the corrupt payment provisions of the 1934 Act. The 1934 Act further provides that fines imposed on an individual violator cannot be paid, directly or indirectly, by the company for whose benefit the bribe was paid or promised.

The FCPA applies to bribes of "any official of a foreign government or instrumentality of a foreign government." In a number of countries, the government is an owner or partial owner of all sorts of ventures. In China, the government is an owner or government officials are owners of what appear to be commercial ventures, and that government ownership creates major issues from an FCPA perspective. For example, in May 2005, a wholly owned Chinese subsidiary of Diagnostic Products Corp. (DPC), a U.S.-based medical equipment firm, pled guilty to criminal charges arising out of approximately $1.6 million in sales "commissions" made by DPC, through its subsidiary, to doctors and laboratory

staff employed by state-owned hospitals in China in order to generate business. The doctors and laboratory staff were considered officials of a foreign government or its instrumentality.[10]

The broad scope of the foreign bribe provisions of the FCPA is best illustrated by the next case dealing with travel and entertainment expenses for Chinese foreign officials:

> In *SEC v. Lucent Technologies, Inc.*,[11] the Commission's complaint alleged that over a three year period Lucent, through a subsidiary, paid over $10 million for about 1,000 Chinese foreign officials to travel to the U.S. The SEC concluded that about 315 of the trips had a disproportionate amount of sightseeing, entertainment and leisure. Some of the trips were, in fact, vacations to places such as Hawaii, Las Vegas, the Grand Canyon, Disney World and similar venues. These expenses, for officials Lucent was either doing business with or attempting to do business with, were booked to a factory inspection account. The company failed over the years to provide adequate FCPA training.
>
> To resolve the SEC's case, Lucent consented to an injunction prohibiting future violations of the FCPA books and records provisions. In addition, the company agreed to pay a $1.5 million civil penalty.[12]

Theoretically, an FCPA violation consisting of a significant bribe to a foreign official can produce a double-dip reward for the whistleblower. The whistleblower could receive one reward from the SEC and a second bounty from the Internal Revenue Service if the company improperly deducted the bribe payment for federal income tax purposes. (See Chapter 9.)

Ponzi Schemes

As the SEC defines it, a Ponzi scheme is:

> an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity.[13]

Ponzi schemes require a consistent flow of funds from new investors to continue and usually collapse when it becomes difficult to recruit new investors or when old investors want to cash out.

Ponzi schemes are named after Charles Ponzi. In the 1920s, Ponzi convinced thousands of New England residents to invest in a postage-stamp speculation scheme. He promised investors that he could provide a 50 percent return in just 90 days and initially purchased a small number of international mail coupons in support of his scheme. However, Ponzi soon switched to using new funds to pay off earlier investors.[14]

Ponzi schemes can involve substantial amounts of money, as in the case of Madoff, which involved approximately $65 billion. Unfortunately, the fraudster typically cannot pay any significant part of the monetary sanctions imposed by the SEC as a result of the whistleblower's actions. However, as in the Madoff Ponzi scheme, usually other persons who are involved can pay monetary sanctions.

Illegal Insider Trading

The term "illegal insider trading" refers generally to purchasing or selling a security in breach of a fiduciary duty or other relationship of trust and confidence while in possession of material, nonpublic information about the security. Insider trading violations may also include "tipping" such information to third persons, securities trading by the person tipped, and securities trading by those who misappropriate such information.

Examples of insider trading cases that have been brought by the SEC are cases against:

- Corporate officers, directors, and employees who traded the corporation's securities after learning of significant, confidential corporate developments;
- Friends, business associates, family members, and other "tippees" of such officers, directors, and employees, who traded the securities after receiving such information;
- Employees of law, banking, brokerage and printing firms who were given such information to provide services to the corporation whose securities they traded;
- Government employees who learned of such information because of their employment by the government; and
- Other persons who misappropriated, and took advantage of, confidential information from their employers.[15]

It is the SEC's position that the insider trading "undermines investor confidence in the fairness and integrity of the securities markets." Accordingly, the SEC has treated the detection and prosecution of insider trading violations as one of its enforcement priorities.[16]

The Kaisers received their $1 million bounty because Pequot and Sanberg allegedly received and traded on confidential information belonging to Microsoft that was revealed to them by David Zilkha in breach of his fiduciary duty to Microsoft.

RULE 10b-5: MARKET MANIPULATION

Section 10(b) of the 1934 Act and Rule 10b-5 thereunder protect against a wide variety of securities fraud and manipulation. They are the most important provisions of all of the federal securities laws. Ponzi schemes and illegal insider trading, previously discussed, violate these antifraud rules.

However, Rule 10b-5 has a much broader scope and covers the sale or purchase of securities by any persons, whether those securities are publicly traded or not and whether the companies involved are public or private. Hedge funds are increasingly being targeted by the SEC for violating Rule 10b-5 as well as comparable provisions of the Investment Advisors Act of 1940, another securities law subject to bounties under Dodd-Frank.

Rule 10b-5 also covers various forms of market manipulation. For example, in May 2009, the SEC filed securities fraud charges against Pegasus Wireless Corporation and two Pegasus officers who allegedly illegally sold hundreds of millions of Pegasus shares they secretly controlled and lied about the transactions in company filings. The SEC alleged that former CEO Jasper Knabb and former chief financial officer Stephen Durland reaped more than $30 million in illicit profits and used these profits to support their extravagant lifestyles, including the purchase of homes, boats, and sports cars. According to the complaint, Knabb and Durland created Pegasus from a dormant shell company around 2005. They then touted several acquisitions in a series of press releases, causing Pegasus's stock price to soar and briefly giving the company a market capitalization of more than $1.4 billion. Unbeknownst to investors, however, Knabb and Durland are alleged to have secretly controlled through nominees hundreds of millions of Pegasus shares, which they sold to individual investors and dumped on the open market through 2008. Pegasus saw its share price steadily decline to less than a penny.

VIOLATING THE ACCOUNTING STANDARDS

A public company is required by the 1934 Act to:

- make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; and
- devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that:
  - transactions are executed in accordance with management's general or specific authorization;
  - transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;
  - access to assets is permitted only in accordance with management's general or specific authorization; and
  - the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.[17]

The 1934 Act's requirements with regard to the maintenance of books and records and a system of internal control were enacted largely in response to disclosures that many U.S. corporations had established so-called off-the-book accounts and slush funds. However, they are applicable to all U.S. public companies, whether or not they engage in foreign business or employ slush funds.

It must be borne in mind that the accounting standards imposed by the 1934 Act are directed at the accuracy of the company's books, records, and accounts, not its financial statements. Thus, even though the company has not paid foreign bribes and even though its published financial statements may be accurate in all respects, it could nonetheless be in violation of the 1934 Act if, for example, its books and records improperly characterized the nature of a perfectly legitimate item of expense.

FALSE FINANCIAL STATEMENTS BY PUBLIC COMPANIES

If a public company knowingly provides the public with false financial statements, or files such knowingly false financial statements with the SEC, this

violates the 1934 Act, whether or not the company is in compliance with the accounting standards recited above. For example, if an employee or other person, whether employed by the company or not, knows that the company is materially overstating its income and provides original information to the SEC about this practice, and that information ultimately leads to a judicial or administrative order to have the company or its insiders pay more than $1 million, that whistleblower may be entitled to the bounty.

State and Municipal Financings

States and municipalities issue debt securities to finance their operations. These debt securities are accompanied by offering circulars, prospectuses, or other marketing materials that are subject to the antifraud provisions of federal securities laws. For example, the SEC charged the State of New Jersey with securities fraud for misrepresenting and failing to disclose to investors in billions of dollars' worth of municipal bond offerings that it was underfunding the state's two largest pension plans, the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System.[18]

Private Company Violations

The antifraud provisions of the 1934 Act apply to the issuance of stock or other securities by private companies. For example, if a private company raises $10 million in private equity and it can be proven that the company knowingly made material misstatements, that is a violation of the 1934 Act and is subject to the bounty provision.

Private companies can also violate the FCPA either directly or by assisting a public company to do so. Although the U.S. Department of Justice can enforce the FCPA against a private company, the SEC could have jurisdiction to name the private company as an aider and abettor of the violation of the FCPA by the public company. Technically, Dodd-Frank applies its bounty provisions only to judicial or administrative actions by the SEC. However, the U.S. Department of Justice also has its own bounty program.

Broker-Dealer Violations

The 1934 Act requires broker-dealers to be registered with the SEC, subject to certain exemptions, and vigorously enforces this registration provision. For example, in February 2009, the SEC brought action against UBS AG, a Swiss investment bank. The complaint alleged that UBS's conduct facilitated the

ability of certain U.S. clients to maintain undisclosed accounts in Switzerland and other foreign countries, which enabled those clients to avoid paying taxes related to the assets in those accounts. UBS agreed to settle the SEC's charges by consenting to the issuance of a final judgment that permanently enjoins UBS and orders it to disgorge $200 million. As alleged in the SEC's complaint, from at least 1999 through 2008, UBS acted as an unregistered broker-dealer and investment advisor to thousands of U.S. persons and offshore entities with U.S. citizens as beneficial owners. UBS had at least 11,000 to 14,000 such clients and held billions of dollars of assets for them. The U.S. cross-border business provided UBS with revenues of $120 to $140 million per year.

Cases are also brought by the SEC for violation of the duty of broker-dealer firms to supervise registered representatives. However, these cases typically are settled for amounts less than $1 million.

OTHER SECURITIES LAWS

Other securities law statutes include the Trust Indenture Act of 1939, the Investment Advisors Act of 1940, and the Investment Company Act of 1940. The Trust Indenture Act regulates, among other things, indenture trustees (typically banks) for large bond and other debt issues. The Investment Advisors Act covers, among others, persons who provide advice on investing in securities. The Investment Company Act regulates all mutual funds as well as other types of funds.

For example, in May 2009, the SEC filed a civil action charging the persons who operate the Reserve Primary Fund (a money market mutual fund) with fraud for failing to provide key material facts to investors and trustees about the fund's vulnerability as Lehman Brothers sought bankruptcy protection. The Reserve Primary Fund "broke the buck" on September 16, 2008, when its net asset value fell below $1.00 per share, meaning investors in the fund would lose money. According to the complaint, defendants failed to provide key material information to the Reserve Primary Fund's investors, board of trustees, and ratings agencies after Lehman filed for bankruptcy protection on September 15, 2008. The fund, which held $785 million in Lehman-issued securities, became illiquid on that day when the fund was unable to meet investor requests for redemptions. According to the complaint, the defendants misrepresented that the investment advisor to the fund would provide the credit support necessary to protect the $1 net asset value of the Reserve Primary Fund.

If a whistleblower provided the "original information" to the SEC with respect to principals of the Reserve Primary Fund and if fines and penalties collected by the SEC exceeded $1 million, the whistleblower could be entitled to a bounty.

PROTECTIONS FOR WHISTLEBLOWERS

Dodd-Frank contains the following protections for whistleblowers:

- A whistleblower may make a claim anonymously. However, the anonymous whistleblower must be represented by counsel when claiming the award and, prior to payment, the identity of the whistleblower must be disclosed together with any other information that the SEC requires.
- Dodd-Frank extends the protection against retaliation to include employees of consolidated subsidiaries and affiliates of public companies, thereby removing limitations imposed by prior U.S. Department of Labor decisions.
- Whistleblowers who allege that they were discharged or discriminated against in violation of the anti-retaliation provisions can bring a cause of action in federal court and, if they prevail, the court is required to order reinstatement, double back pay with interest, and compensation for litigation costs, expert witness fees, and reasonable attorney's fees. (See Chapter 10 for more information.)
- Subject to exceptions, the SEC is prohibited from disclosing information that could reasonably be expected to reveal the identity of the whistleblower.

The SEC whistleblower rules are extremely detailed and complex. Accordingly, we have devoted a full chapter, Chapter 11, to a detailed review of these rules. It is clear that potential whistleblowers will need the help of a securities attorney to guide them through these complex rules.

COMMODITY EXCHANGE ACT

Dodd-Frank not only mandated whistleblower bounties be paid by the SEC but also mandated that the Commodity Futures Trading Commission (CFTC) pay similar bounties. Dodd-Frank amended the Commodity Exchange Act by adding Section 23, "Commodity Whistleblower Incentives and Protection."[19] Section 23 directs that the CFTC must pay awards, subject to certain limitations

and conditions (similar to the SEC conditions cited in Chapter 11 of this book), to whistleblowers who voluntarily provide the CFTC with original information about a violation of the Commodity Exchange Act that leads to successful enforcement of an action brought by the CFTC that results in monetary sanctions exceeding $1 million and of certain related actions.

Many of the definitions and requirements for an award under the Commodity Exchange Act are similar to those under the securities laws, which are discussed in Chapter 11. However, there are a few differences, and it should not be assumed automatically that the CFTC rules are identical to the SEC rules. For example, the statute of limitations for retaliation claims by employee whistleblowers under the Commodity Exchange Act is only 2 years after the retaliation. In contrast, the statute of limitations for retaliation claims by employee whistleblowers with respect to the securities laws is the lesser of (1) 6 years after the date of the retaliation or (2) 3 years after the date when facts material to the retaliation claim are known or should have been reasonably known by the employee whistleblower, but not more than 10 years after the violation.

The Commodity Exchange Act covers the sale of commodities—the futures trading of fungible goods and assets, such as agricultural products (grain, animal products, fruits, coffee, sugar), energy (crude oil, coal electricity), natural resources (gold, precious gems, plutonium, water), commoditized goods (generic pharmaceuticals), and financial commodities (foreign currencies and securities). The stated mission of the CFTC is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and financial futures and options and to foster open, competitive, and financially sound futures and option markets.

Chapter 2 of this book is devoted to the $96 million payment to Cheryl Eckard that was paid on the False Claims Act, which is much older than the Dodd-Frank statute. In fact, the False Claims Act was passed by Congress on March 2, 1863, in the middle of the Civil War.

The bounty payments under the False Claims Act typically are based on so-called qui tam actions (private lawsuits to enforce the right of government), which are discussed in detail in Chapter 8. In contrast to the False Claims Act, Dodd-Frank does not permit qui tam actions. Instead, the SEC is required to make the necessary bounty payments without the necessity of a private lawsuit.

The story of Cheryl Eckard's whistleblower reward is followed, in Chapter 3, by the story of the Pfizer whistleblower rewards, which totaled over $100 million.

NOTES

1. SEC Litigation Release No. 21540, May 28, 2010.
2. D. Malan, "Messy Divorce Leads to Whistleblower Bounty in Pequot Capital Case," Law.com, August 12, 2010. www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202464787161.
3. S. Dugner, "Would a Fraud Bounty Have Exposed Madoff Years Ago?" *Freakonomics,* February 26, 2009. www.freakonomics.com/2009/02/26/would-a-fraud-bounty-have-exposed-madoff-years-ago.
4. K. Frieswick, "Madoff Whistle-Blower Offers His Account," *Boston Globe*, March 2, 2010. See also H. Markopolos, *No One Would Listen* (Hoboken, NJ: John Wiley & Sons, 2010).
5. Limited to the extent deposited into a disgorgement fund or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002. See SEC Rule 21F-4(e).
6. Assessment of the SEC's Bounty Program, Report No. 474, March 29, 2010. www.sec-oig.gov/Reports/AuditsInspections/2010/474.pdf.
7. www.sec.gov/comments/s7-33-10/s73310-166.pdf. See Chapter 11 for more detailed information.
8. SEC Rule 21F-4(e) defines "monetary sanctions" to mean any money, including penalties, disgorgement, and interest, ordered to be paid and any money deposited into a disgorgement fund or other fund pursuant to Section 308(b) of the Sarbanes-Oxley Act of 2002 as a result of a commission action or a related action.
9. Section 30A of 1934 Act.
10. Securities Exchange Act of 1934 Release No. 51724, May 20, 2005.
11. *SEC v. Lucent Technologies, Inc.*, Civil Action No. 07-092301 (D.D.C. Filed December 21, 2007).
12. Frederick Lipman, *International and U.S. IPO Planning: A Business Strategy Guide* (Hoboken, NJ: John Wiley & Sons, 2009), pp. 90–91.
13. www.sec.gov/answers/ponzi.htm.
14. Ibid.
15. www.sec.gov/answers/insider.htm.
16. Ibid.
17. Section 13(b)(2) of 1934 Act.
18. "SEC Charges State of New Jersey for Fraudulent Municipal Bond Offerings," SEC Press Release 2010-152, August 18, 2010. www.sec.gov/news/press/2010/2010-152.htm.
19. Section 748 of Dodd-Frank.