

Whistleblowers 4-1-1

By **Matt Masich**
LAW WEEK COLORADO

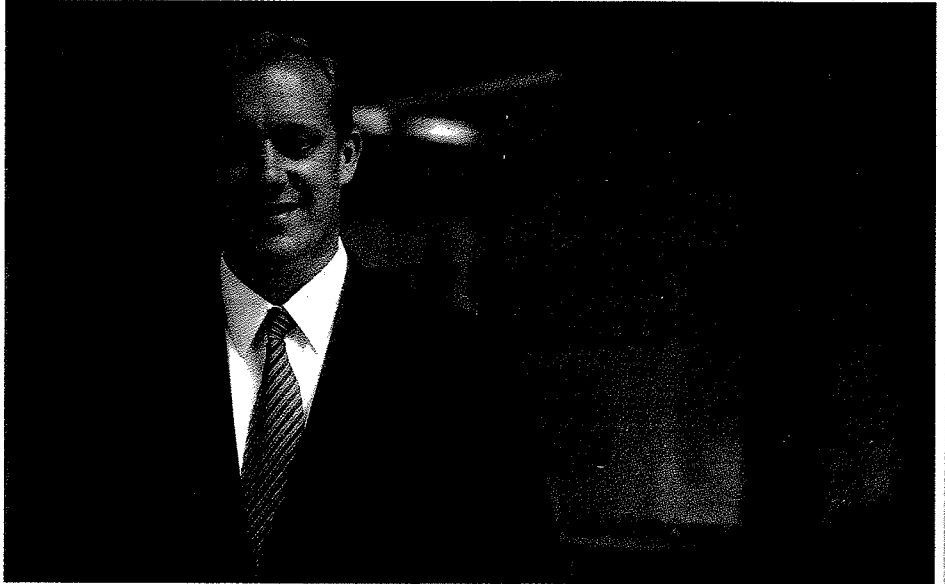
DENVER — The Securities and Exchange Commission enacted rules in May that offer employees potentially huge bounties for reporting their employers' corporate wrongdoing.

This monetary incentive for employees to go straight to the government with their company's infractions rather than try to solve the problem internally poses a challenge for in-house lawyers running corporate compliance programs.

"This obviously sent real shock waves through the business community," said T. Markus Funk, a complex commercial litigation, investigations and white-collar defense partner at Perkins Coie, and 10-year veteran of Chicago's US Attorney's Office. "General counsels now must devise workable solutions and set up appropriate incentive structures to ensure that company employees report instances of purported wrongdoing to the company first, instead of going directly to the government."

Funk will moderate a free CLE panel discussion at his firm next month, "The Next Enforcement Wave? Deconstructing the SEC's New Whistleblower Bounty Program Rules."

Panelists Matt Kirsch, chief of the Economic Crimes Section of the Colorado U.S. attorney's office, and Donald Hoerl, regional director at the SEC's Denver office,



Perkins Coie white collar defense partner T. Markus Funk outside the Chicago federal courthouse where he practiced as an assistant U.S. attorney.

play big roles fighting white-collar crime in Colorado. "They are perfectly positioned to share with the business and legal communities their insights into how the U.S. government intends to address the new rules, and what sorts of enforcement actions we might expect," Funk said.

Sean Radcliffe, general counsel at Douglas County-based business information services company IHS, will give the in-house perspective. Perkins Coie attorneys Jason

Day and Pravin Rao will draw on experience counseling companies on the new rules.

Under the whistleblower bounty program, people can be rewarded for giving the SEC original information that leads to enforcement actions netting more than \$1 million in civil or criminal sanctions. The bounty ranges from 10 percent to 30 percent of the money collected — that's a possible reward of hundreds of thousands to hundreds of millions of dollars for a single whistleblower.

Corporations lobbied for a mandate that whistleblowers first report violations to their employers, but the SEC rejected that. The rules allow employees that make an internal complaint to remain eligible for a bounty if their company doesn't address the issue and the employee reports to the SEC within 120 days. The rules also allow higher bounties for employees who report internally before going to the government.

The bounty goes to the first person to report to the SEC, which could prompt employees to blow the whistle as soon as possible. This could cause employees to race to report at the first appearance of impropriety, even if there are no actual violations, making it important for companies to be mindful of how their actions come across to employees.

The CLE will explore a range of strategies to motivate employees to report internally first, Funk said. To start, companies should make reporting obligations and the means of reporting as straightforward as possible. Methods of reporting anonymously, like an 800 number or compliance officer e-mail, should be well-advertised. •

— Matt Masich, MMasich@CircuitMedia.com

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IF YOU GO

WHAT: Whistleblower bounty CLE (1.5 credits), open to all

WHO: Matt Kirsch, U.S. attorney's office; Don Hoerl, SEC; Sean Radcliffe, IHS general counsel; Jason Day, Pravin Rao and Markus Funk, Perkins Coie.

WHEN: Aug. 10, 3:30-5:00 p.m.

WHERE: Perkins Coie, 1900 16th St., 14th floor, Denver

HOW MUCH: Free