

## CORPORATE COMPLIANCE ALERT

11/18/13

### Expanded Antitrust Whistleblower Protections Pass in the U.S. Senate

On November 4, 2013, the U.S. Senate unanimously passed the bipartisan Criminal Antitrust Anti-Retaliation Act of 2013 (CAARA), which would extend whistleblower protections to employees who provide information to the U.S. Department of Justice (DOJ) regarding criminal antitrust violations, including price fixing, market allocation and bid rigging. The bill is based upon a 2011 report of the Governmental Accountability Office that recommended the enactment of a remedy for antitrust whistleblowers to supplement the antitrust leniency program enacted in 2004. The leniency program was found to have provided effective incentives for guilty parties to report antitrust violations, but without providing protections or incentives for reporting by innocent third parties.

The language of the bill, as approved in the Senate, provides that, “no employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment” because of protected conduct. Protected conduct would include any internal and external reports of what the whistleblower reasonably believes to be a criminal antitrust violation (meaning an agreement in restraint of trade under 15 U.S.C. § 1 or § 3), or a violation of other criminal laws “in conjunction with” a violation of antitrust laws or a DOJ antitrust investigation. The bill offers whistleblowers broad civil remedies for violations, including reinstatement, back pay (with interest), and fees and costs.

The bill, previously introduced in July 2012, died in committee without a vote. The new version of the bill, which passed out of committee and received a unanimous vote on the floor, contains changes aimed at improving the definition of a “covered individual” and further clarifying that the bill’s protections apply only to the reporting of criminal violations. It remains to be seen what further changes or clarifications may be added before the bill (or any similar bill) receives a vote on the floor of the U.S. House of Representatives. Roetzel will issue further alerts when and if further action is taken in the House.

The co-authors of the bill are U.S. Senators Patrick Leahy (D-Vt.) and Chuck Grassley (R-Iowa), the chairman and ranking member of the Senate Judiciary Committee, who were responsible for authoring similar whistleblower statutes as part of the Sarbanes-Oxley Act in 2002. Senator Leahy contends that the bill does not provide an economic incentive to report violations, but “simply makes whole employees who have been fired or discriminated against for blowing the whistle on criminal conduct.” Senator Leahy has urged the U.S. House of Representatives to act quickly to pass the bill, stating:

Current law encourages self-reporting of criminal antitrust activity, yet it doesn’t provide any protections for innocent third parties who blow the whistle on such activity. Our bill strengthens the enforcement of criminal antitrust laws by adding a civil remedy for antitrust whistleblowers who are retaliated against.

The recent action on this bill serves as a reminder that the scope of whistleblower laws and protections continue to expand. In the wake of this expansion, companies must remain vigilant

about maintaining compliance policies and company practices that are consistent with all legal requirements. A company that is proactive about investigating complaints and prepared to act quickly in response to whistleblower allegations will be in the best position to both manage its ongoing risk and to avoid claims of retaliation.

For further information, please contact the following Roetzel attorneys:

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