SEC Issues Largest Whistleblower Award to Date

After issuing its first whistleblower award of $50,000 approximately one year ago, the SEC has continued to reward whistleblowers who report potential violations of federal securities law that result in successful enforcement actions, including a recent award for $14 million. The magnitude of this award is sure to encourage additional whistleblower reports to the SEC. Companies are advised to take seriously all internal complaints and conduct thorough investigations.

Recent Whistleblower Award

On October 1, 2013, the SEC announced an award of more than $14 million to a whistleblower who provided information that led to a successful SEC enforcement action. The SEC did not reveal the total amount of funds recovered as a result of the whistleblower's tip, but indicated that the amount of the award, "in light of the monetary sanctions already collected," "appropriately recognizes the significance of the information [and assistance] . . . provided by the Claimant," and was consistent with "the law enforcement interests in deterring violations by granting awards."

The SEC further noted that the whistleblower provided original information voluntarily. The information enabled the SEC to bring an enforcement action less than six months after receiving the initial tip. SEC Chair Mary Jo White said: "We hope an award like this encourages more individuals with information to come forward."

Previous Whistleblower Awards

On August 30, 2013, the SEC announced that three whistleblowers were collectively awarded more than $25,000 for tips that helped the SEC bring a case against Locust Offshore Management and its CEO. This was the second whistleblower award issued. The SEC noted that two of the whistleblowers provided information that caused the SEC to open an investigation, and the third whistleblower identified key witnesses and confirmed information provided by the other two. As with the most recent award, the claimants' identities were protected under the SEC whistleblower rules.

In addition to the SEC's civil case, Locust's CEO pled guilty to criminal wire fraud charges that were brought by the US Attorney's Office for the District of Massachusetts. He was sentenced to 40 months in prison. In matters where there are criminal or other proceedings parallel to the SEC action, the whistleblower rules provide for whistleblowers to apply for an additional award based on other regulator's collections. Here, the SEC approved a five percent payout to each whistleblower for monies collected in the criminal proceeding. Approximately $170,000 has been administratively forfeited.

In addition to the Locust matter, on August 21, 2012, the SEC issued an award of $50,000 to a whistleblower who helped stop an alleged multi-million dollar fraud. The award represented 30 percent of the amount collected in the SEC enforcement action.

General Background on the Whistleblower Program

The SEC's whistleblower program provides monetary incentives for individuals who come forward and report possible violations of the federal securities laws. Awards under the program can range from 10 to 30 percent of the money collected in the SEC enforcement action.

To receive an award, an individual must provide information that (1) is original; (2) is provided voluntarily (i.e., before an SEC request for the information); (3) is high-quality; (4) is timely; and (5) leads to an SEC enforcement action in which more than $1 million is recovered.

The whistleblower program also contains strong anti-retaliation provisions that prohibit retaliation by employers who learn a whistleblower's identity, and even provides a private cause of action in federal court for those individuals who believe they have suffered retaliation. In addition, the SEC cannot disclose information that might reveal a whistleblower's identity.

Because there is no internal reporting requirement to be eligible for a whistleblower award, a whistleblower can bypass internal compliance and simply report perceived misconduct to the SEC without first alerting his or her employer. To address this often criticized feature of the Whistleblower Rules, the SEC has adopted certain measures designed to encourage whistleblowers to first report internally, such as (1) granting them 120 days to report the same information to the SEC without losing their place in line; (2) deeming a whistleblower to have reported all information reported to the SEC by the company if the whistleblower's internal reporting triggers an investigation and report by the company to the SEC; and (3) considering whether a whistleblower first reported internally in determining the amount of the award.

Key Takeaways

To the extent the SEC's whistleblower program was unknown to some, the award of $14 million is sure generate significant publicity. The amount of this award, by design, will undoubtedly encourage individuals who believe they have information valuable to the SEC to come forward.

A company's best defense against bounty-seeking whistleblowers remains a robust internal compliance reporting mechanism. Companies are also well-advised to take seriously all complaints, as the whistleblower's next call may be to the SEC.

For more information, please contact authors [Jonathan E. Green](#) or [Lindsay S. Moilanen](#).

Chicago Office
+1 312 583 2300

Frankfurt Office
+49 69 25494 0

London Office
+44 20 7105 0500

Los Angeles Office
+1 310 788 1000

New York Office
+1 212 836 8000

Palo Alto Office
+1 650 319 4500

Shanghai Office
+86 21 2208 3600

Washington, DC Office
+1 202 682 3500

West Palm Beach Office
+1 561 802 3230