

SEC ANNOUNCES MORE THAN \$20 MILLION IN WHISTLEBLOWER AWARDS

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In the course of one week, the United States Securities and Exchange Commission announced awards to three whistleblowers totaling more than \$20 million under the Dodd-Frank Whistleblower Program.

On November 30, the SEC announced awards of more than \$8 million each to two whistleblowers. The first individual alerted the agency to conduct that became the subject of an enforcement action and continued to provide additional information throughout the investigation, while the second whistleblower provided information that allowed the agency to understand and assess the implications of the misconduct. Under the Whistleblower Program, eligible whistleblowers may receive awards of between 10% and 30% of the sanctions collected in actions brought by the SEC and related actions brought by other authorities. To maintain the confidentiality of the individual whistleblower, the SEC does not release information regarding the target of the investigation or the percentages of awards granted to the whistleblowers, but in the Notice of Covered Action it did note that in cases in which more than one whistleblower receives an award, the combined awards cannot exceed 30% of the recovery. Seven other individuals submitted unsuccessful applications for whistleblower awards related to that enforcement.

Less than one week later, the SEC announced an award of more than \$4.1 million to a foreign national working outside of the United State who reported information regarding a multi-year, widespread securities violation. In announcing the award, Jane Norberg, Chief of the SEC's Office of the Whistleblower noted that the whistleblower was a former company insider and stated that "Company insiders often have valuable information that can help the SEC halt an ongoing securities law violation and better protect investors."

While the SEC has made awards to only 50 whistleblowers under the Dodd-Frank Whistleblower Program, which began in 2011, those individuals have received nearly \$180 million. Chief Norberg recently touted the Program stating, that "The value of whistleblowers can be seen in the more than \$1 billion in financial remedies ordered against wrongdoers based on actionable information from whistleblowers, including more than \$671 million in disgorgement of ill-gotten gains, much of which has been or is scheduled to be returned to harmed investors."

Earlier in November, the SEC released its 2017 Annual Report to Congress, in which it highlighted receiving more than 4,400 tips in FY 2017, continuing its streak of receiving more complaints each year since the Program began and representing an increase of more than 50 percent since 2012. While the Dodd-Frank Act prohibits disclosing any information that could reasonably be expected to reveal the identity of a whistleblower, the Report revealed certain trends in whistleblowers over the past year, including that about 62% of award recipients were current or former insiders. Of those who were current or former employees, nearly 83% represented that they had filed internal reports or understood that their supervisors or relevant compliance personnel were aware of the alleged wrongdoing before submitting a tip to the SEC. The report also stressed the agency's efforts to curb retaliation against whistleblowers. The Supreme Court is currently reviewing the applicability of Dodd-Frank anti-retaliation measures to whistleblowers who report securities laws violations internally without also reporting to the SEC.

The Report lists promoting public awareness of the whistleblower program as a primary goal of the SEC's Office of the Whistleblower, and the Commission has regularly trumpeted large whistleblower awards, including those issued last week, to encourage whistleblowers to provide evidence of potential issues. While we await the Supreme Court's ruling on anti-retaliation measures, we expect the number of individuals submitting tips to the SEC to continue to increase. Because internal reports of potential wrongdoing allow covered entities the opportunity to investigate and mitigate existing violations, as well as prevent future violations, covered entities should create a culture encouraging internal reporting, including evaluating their existing internal reporting policies and procedures and updating those plans to incentivize employees to report through internal channels. Companies must also respond immediately to such reports in order to mitigate penalties that may result from any violations.

Bryan Cave LLP has a team of knowledgeable lawyers and other professionals prepared to help employers. If you or your organization would like more information on the SEC's whistleblower awards, the Dodd-Frank Whistleblower Program, or any other employment issue, please contact an attorney in the Labor and Employment practice group.

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