On Wednesday April 22, the SEC announced an award of between $1.4 and $1.6 million to a compliance officer, the second such award to be offered under the SEC’s Whistleblower Program. In a press release, Andrew Ceresney, Director of the SEC’s Division of Enforcement, noted the importance of such professionals who are often in a unique position to disclose information about wrongdoing, particularly in light of potential imminent harm. Highlighting the Program’s general exclusion of audit and compliance professionals as eligible whistleblowers, Mr. Ceresney explained that “When investors or the market could suffer substantial financial harm, our rules permit compliance officers to receive an award for reporting misconduct to the SEC.”

According to the SEC, this compliance professional reported the wrongdoing to the SEC after learning that responsible management of the entity were aware of potentially impending harm to investors but failed to take any actions to prevent that harm. Under the Program, eligible whistleblowers may receive awards ranging from 10 to 30 percent of the amount the SEC collects in a successful enforcement action, providing those collections exceed $1 million. In this instance, the SEC
has revealed that the whistleblower will receive between $1.4 and $1.6 million, but the agency has not identified the percentage of sanctions collected from the company that this award represents.

The first award to a compliance professional under this Program was announced last August. At that time, the SEC announced that it was awarding $300,000 to an individual who had reported wrongdoing internally and later reported the same information to the SEC when management took no action on the reported information. While compliance and internal audit professionals generally are not considered eligible for whistleblower awards under the Program, there are three exceptions in which such personnel may become eligible whistleblowers: (1) when the whistleblower believes disclosure may prevent substantial injury to the financial interest or property of the entity or investors; (2) when the whistleblower believes that the entity is engaging in conduct that will impede an investigation; or (3) when at least 120 days have elapsed since the whistleblower reported the information to his or her supervisor or the entity’s audit committee, chief legal officer, chief compliance officer – or at least 120 days have elapsed since the whistleblower received the information, if the whistleblower received it under circumstances indicating that these people were already aware of the information.

This most recent award demonstrates the SEC’s continued focus on compliance and audit personnel as a source of information. The increasing size of awards to these professionals highlights the continued need for companies to both (1) ensure that they have vigorous compliance programs in place to detect potential issues and (2) respond immediately and effectively to internally reported information. Companies should communicate with employees who make internal reports to assure them that the information has been received and is being addressed. Companies also should train supervisors to understand their role in internal reporting and their responsibilities when employees raise concerns of suspected wrongdoing. Under the whistleblower exceptions for compliance professionals, the 120-day clock begins to run when the employee reports the information to his or her supervisor. Therefore, it is critical that supervisors understand their responsibility to respond to employee concerns promptly and in accordance with the company’s compliance program. You do not want the clock ticking when the report has not yet reached the people who can truly respond to it. For further information, see our previous alert SEC Touts Whistleblower Award to a Compliance Professional – Use Care in Responding to Reports of Potential Violations.
Finally, we predict more of these whistleblower awards are coming. The whistleblower here is represented by an attorney whose firm’s webpage has a "Practice Areas" section called “SEC & CFTC Whistleblower,” which includes a link to “Contact form for Whistleblowers with SEC or CFTC claims.” Thus, just as the False Claims Act amendments in 1986 generated a cottage industry of firms representing whistleblowers in government contracting, the Dodd-Frank Act has begun to generate the same kind of industry related to public company whistleblowers.

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