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SEC's Whistleblower Program Grants Fourth Largest Award in its History

Corporate Defense and Disputes on **August 30, 2023**

On August 4, 2023, the Securities and Exchange Commission announced awards totaling more than $104 million to seven whistleblowers in connection with a successful SEC enforcement action. The SEC's Press Release can be found (here), and the Order can be found (here).

The Dodd Frank Act, passed into law on July 21, 2010, protects the confidentiality and identity of whistleblowers. But the worry that your employer may fire you if they catch wind of the fact you are tipping off the SEC may be enough to keep some individuals from coming forward with vital information about potential securities law violations. Awards like the one granted by the SEC on August 4 go a long way in encouraging whistleblowers to take that risk—while the allocations of the award remain confidential, if divided seven ways, each individual is walking away with nearly $15 million. Claimants that came forward earliest (leading to the opening of the investigation), provided ongoing assistance as the investigation progressed, or provided corroborating documentation or other significant evidence are likely to have been awarded an even greater share. The seven individuals sharing in this particular $104 million award provided documents to the SEC supported allegations of misconduct, sat for interviews, and identified potential witnesses.

Any individual who knows original information regarding securities law violations should therefore be encouraged to come forward to report that information to the SEC and continue to make themselves available to assist with any ensuing investigation. The SEC is authorized by Congress to provide monetary awards to eligible individuals who come forward with high-quality "original information" that leads to an SEC enforcement action in which over $1,000,000 in sanctions is ordered. A whistleblower's submission is considered to be "original information" when it is (i) derived from the whistleblower's public knowledge, (ii) not already known to the SEC from any other source (unless the whistleblower is the original source of the information), (iii) not exclusively derived from an allegation made in certain judicial and governmental proceedings, and (iv) provided to the SEC for the first time after July 21, 2010 (the date of enactment of the Dodd-Frank Act). 17 C.F.R. § 240.21F-4(b). The total award amount can range from 10-30% of the monetary sanctions collected in the enforcement action—though the funds are not given to whistleblowers at the detriment of aggrieved investors. Whistleblower awards are paid out of an investor protection fund, which is financed entirely through monetary sanctions paid to the SEC by securities law violators, so no money is taken from harmed investors.

The strength and effectiveness of the Whistleblower Program is evidenced by the fact that August 4 was not the SEC's first announcement if a history-breaking award this year. Just a couple of months ago, the SEC announced its largest-ever whistleblower award—nearly $279 million to a single whistleblower, whose information expanded the scope of the SEC's already-existing investigation. SEC.gov | SEC Issues Largest-Ever Whistleblower Award. As these awards show, the Whistleblower Program is succeeding in providing significant incentive for whistleblowers to report accurate information regarding securities law violations to the SEC; while some whistleblowers may fear that providing a tip to the SEC could lead to retaliation, the sheer size of the SEC's awards may still provide a compelling incentive to step forward. And of course, employers should make efforts to prevent any form of retaliation for complaints to the SEC.

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