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SEC Announces Slew of Enforcement Actions Regarding Whistleblower Protection Rule

Proskauer Whistleblower Defense on **September 11, 2024**

The SEC recently announced the settlement of multiple enforcement actions for violations of its whistleblower protection rule, which prohibits "any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation." SEC Rule 21F-17(a). These settlements resulted in the targeted companies paying fines exceeding $3 million in the aggregate.

As we have previously reported (see here and here), the SEC has closely scrutinized provisions in common contracts, such as confidentiality, employment, and separation agreements, that could be interpreted as creating impediments to whistleblower complaints.

On September 4, 2024, the SEC announced that a New-Jersey based financial planning firm and affiliated investment advisors had agreed to settle charges that they had violated Rule 21F-17(a) by asking brokerage customers and advisory clients to sign confidentiality agreements in connection with payments intended to compensate for losses caused by alleged breaches of securities laws. According to the order, the offending agreements impeded clients from reporting potential securities law violations by permitting communications only where the SEC first initiated an inquiry. In addition, some of the agreements further required the clients to represent that they had not reported the underlying dispute to any securities regulator and would forever refrain from such reporting. Without admitting or denying the SEC's findings, the firms consented to a cease-and-desist order, a censure, and a civil penalties totaling $240,000.

Less than one week later, on September 9, 2024, the SEC announced that it had settled charges with seven public companies for using employment, separation, and other agreements that required employees to waive their right to received whistleblower awards. The SEC has consistently maintained that such provisions impede would-be whistleblowers from reporting potential securities violations, in violation of Rule 21F-17(a) (see our posts here and here). Each of the companies agreed to remediate the violations by revising the relevant agreements and they agreed to pay more than $3 million combined in civil penalties.

This recent flurry of enforcement actions by the SEC serves as a vivid reminder for companies to review their existing agreements and policies to ensure compliance with Rule 21F-17(a).

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