

Client Alert

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Whistleblower Awards for Securities Law Violations: SEC Announces Its Largest Awards Yet

The Securities and Exchange Commission (“SEC”) [recently awarded](#) its highest-ever whistleblower awards under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Two whistleblowers will share nearly \$50 million and a third whistleblower will receive more than \$33 million. In total, the SEC has awarded more than \$262 million to 53 whistleblowers since 2012 who reported violations of federal securities laws.

While these awards are outliers in size, the SEC’s whistleblower program remains active. According to the SEC’s Office of the Whistleblower:

- the SEC has received 22,818 tips since the program’s inception;
- the SEC received 4,400 tips in 2017, which was a 50% increase from 2012;
- enforcement actions from whistleblower tips have resulted in more than \$1 billion in financial remedies;
- the SEC has awarded more than \$262 million to 53 whistleblowers since 2012;
- prior to the most recent, record-setting awards, the top ten whistleblower awards made since the Dodd-Frank Act ranged from \$3.5 million to \$30 million; and
- tips have been submitted by individuals in 114 foreign countries, with the top five being the United Kingdom (438), Canada (357), China (238), Australia (198), and India (187).

The SEC has also made it easy to submit tips, with an online portal available on its website.

The details of the whistleblowers’ complaints are confidential, but the size of the awards indicates the materiality of the underlying legal violations. Recall that the SEC’s awards range from 10% to 30% of the money collected in an enforcement action. By granting significant awards such as these, the SEC is giving employees a strong incentive to go directly to the SEC. Moreover, in *Digital Realty Trust, Inc. v. Somers*, the United States Supreme Court recently resolved a split among the circuit courts of appeals and held that the Dodd-Frank Act’s anti-retaliation provisions only apply to employees who reported a violation to the SEC. There is also an active plaintiffs’ bar seeking to represent whistleblowers and help them report alleged violations to the SEC and receive their awards. Indeed, a plaintiff’s firm purporting to represent the whistleblowers in the \$83 million award published its own press release shortly after the SEC made the case public, highlighting its involvement in the matter and inviting other whistleblowers to come forward.

Nevertheless, not all violations are of such materiality as to support the large awards discussed above. Thus, it is not a lost cause to believe that many employees will continue to report internally. For that reason, we continue to recommend that companies constantly reevaluate their internal reporting

programs and whistleblower hotlines so that they are accessible to employees and encourage internal reporting. In addition, allegations that are reported internally need to be handled properly. Among other things, the whistleblower may be incentivized to communicate with the SEC or other regulators quickly if they do not believe their concerns are taken seriously. In addition, companies must train managers to avoid actions that might be deemed retaliatory. Companies should also review their use of separation and severance agreements to make sure their terms do not run afoul of the SEC's whistleblower rules.

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