

Client Alert.

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SEC Whistleblower Office "Open for Business and Ready to Pay"

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Yesterday, one year after the Securities and Exchange Commission's ("SEC") new whistleblower rules took effect, the SEC announced that it has awarded its first financial reward to a whistleblower who provided "documents and other significant information that allowed the SEC's investigation to move at an accelerated pace and prevent the fraud from ensnaring additional victims."¹ The whistleblower, who decided to remain anonymous, will receive at least \$50,000, or 30% of the amount collected by the SEC in its enforcement action involving a multi-million dollar fraudulent scheme. That award will continue to go up as the SEC is able to collect more in disgorgement and penalties as the case progresses.²

As we have previously written, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or the "Act") authorized the SEC's whistleblower program, which went into effect on August 12, 2011.³ Under the SEC's year-old rules, if a whistleblower's report leads to a successful enforcement action and the SEC receives more than \$1 million in financial remedies as a result of the action, the whistleblower is eligible to receive an award of between 10 and 30 percent of the total amount collected by the SEC.⁴ In this case, the informant received the maximum percentage allowable under the rules. In explaining the 30% award, and in hoping to incentivize other whistleblowers to come forward, Robert Khuzami, the Director of the SEC's Division of Enforcement, stated, "This whistleblower provided the exact kind of information and cooperation we were hoping the whistleblower program would attract."

In order to receive the incentive, the whistleblower must provide original information which is not known to the SEC from any other source. Information which is not original or which is not useful to the SEC in investigating or litigating its case is not eligible for a reward. In fact, a second whistleblower in the same matter was not given a reward because the information he provided "did not lead to or significantly contribute to the SEC's enforcement action."

The SEC is now in the position of touting what it believes to be the successful implementation of its very controversial whistleblower program. SEC Chairman Mary Schapiro, who advocated strongly for the authority to reward whistleblowers, stated, "The whistleblower program is already becoming a success. . . . We're seeing high-quality tips that are saving our investigators substantial time and resources."

How many tips? According to Sean McKessy, Chief of the SEC's Whistleblower Office, the SEC has been receiving about eight tips a day since the whistleblower rules became effective a year ago. McKessy also stated, "The fact that we made the first payment after just one year of operation shows that we are open for business and ready to pay people who bring us good, timely information."

¹ See SEC Issues First Whistleblower Program Award (Aug. 21, 2012) available at <http://www.sec.gov/news/press/2012/2012-162.htm>.

² Although the court in this case ordered more than \$1 million in financial sanctions, only approximately \$150,000 has been collected thus far.

³ For more background on the final whistleblower rules adopted by the SEC, see our client alert from May 25, 2011, available at <http://www.mofo.com/files/Uploads/Images/110525-Dodd-Frank-Whistleblower.pdf>.

⁴ For further information about the program, see <http://www.sec.gov/whistleblower>.

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Now that the SEC has issued its first reward, it is expected that the attention drawn to the financial rewards of reporting to the government will increase, and the program will cause a further uptick in tips and enforcement activity. In addition, the attention drawn to the SEC reward will likely increase the number of internal tips and complaints that companies receive from their employees. As a result, now is the time for companies to take steps to ensure that their compliance programs are comprehensive and updated, and that those responsible for addressing complaints, hotlines, tips and employee concerns are adequately trained and able to respond quickly and effectively.

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