

# SEC Shows Continued Willingness to Award Compliance Whistleblowers

April 3, 2020

On March 30, 2020, the U.S. Securities and Exchange Commission (“SEC”) awarded \$450,000 to a whistleblower with “compliance-related responsibilities” who provided the Commission with significant information about internal company conduct.<sup>1</sup> This award represents the third whistleblower award to an individual who had compliance or internal audit responsibilities since the start of the SEC’s whistleblower program.

A whistleblower must provide the SEC with original information to be eligible for an award. Per the regulations implementing the Dodd-Frank Act, “original information” must be derived from a whistleblower’s “independent knowledge or independent analysis.”<sup>2</sup> The SEC will not consider information as derived from “independent knowledge or independent analysis” if the individual is an “employee whose principal duties involve compliance or internal audit responsibilities.”<sup>3</sup> There are three key exceptions to this rule: (1) if the individual has a “reasonable basis to believe that disclosure of the information . . . is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury”; (2) if the individual has “a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct”; and (3) if “[a]t least 120 days have elapsed since [the compliance whistleblower] provided the information to the relevant entity’s audit committee [or other relevant personnel].”<sup>4</sup> In practice, SEC officials have stated that compliance professionals may be rewarded only in “certain limited circumstances.”<sup>5</sup> With this latest order, the SEC has made those circumstances clearer: it is willing to award compliance professionals who come forward with significant information about substantial company violations, after said entity becomes aware of the potential misconduct and fails to act to prevent its occurrence.

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<sup>1</sup> Press Release, SEC Awards \$450,000 to Whistleblower (Mar. 30, 2020), available at <https://www.sec.gov/news/press-release/2020-75>.

<sup>2</sup> 17 C.F.R. § 240.21F-4 (b)(1)(i).

<sup>3</sup> 17 C.F.R. § 240.21F-4 (b)(4)(iii)(B) (emphasis added).

<sup>4</sup> 17 C.F.R. § 240.21F-4 (b)(4)(v)(A)-(C).

<sup>5</sup> Press Release, SEC Awards \$450,000 to Whistleblower, *supra* note 1 (“To ensure that important information about securities laws violations is reported to the SEC when appropriate corrective action is not taken by the company, the rules permit awards to compliance professionals in certain limited circumstances,” said Jane Norberg, Chief of the SEC’s Office of the Whistleblower.”).

The \$450,000 award from earlier this week is the third whistleblower award to an individual with compliance or internal audit responsibilities. In April 2015, the SEC awarded between \$1.4 million and \$1.6 million to a compliance officer who “had a reasonable basis to believe that disclosure to the SEC was necessary to prevent imminent misconduct” and “substantial financial harm” to the company or investors.<sup>6</sup> In August 2014, the SEC awarded \$300,000 to a whistleblower, an employee who was formerly responsible for performing audit and compliance functions.<sup>7</sup> This individual first reported the wrongdoing internally before elevating to the SEC. The company also failed to take action following the employee’s report.

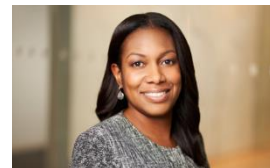
Since issuing its first award in 2012, the SEC has awarded over \$396 million to 77 individuals through its whistleblower program.<sup>8</sup> The most recent whistleblower award serves as a reminder of the importance of thoroughly investigating credible reports of potential securities violations, particularly in situations where those concerns are raised by individuals working in a compliance or audit function, given their expertise and greater visibility into potential compliance or control failures.



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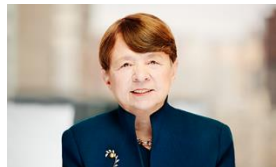


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<sup>6</sup> Press Release, SEC Announces Million-Dollar Whistleblower Award to Compliance Officer (Apr. 22, 2015), available at <https://www.sec.gov/news/pressrelease/2015-73.html>.

<sup>7</sup> Press Release, SEC Announces \$300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company’s Wrongdoing (Aug. 29, 2014), available at <https://www.sec.gov/news/press-release/2014-180>.

<sup>8</sup> Press Release, SEC Awards \$450,000 to Whistleblower, *supra* note 1.



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