

E-ALERT | SEC Whistleblower Program

August 22, 2012

FIRST WHISTLEBLOWER AWARD

On August 21, 2012, the Securities and Exchange Commission (SEC) issued the first award under its new whistleblower program.¹ The whistleblower program was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and is governed by implementing rules of the SEC adopted in 2011.² Neither the details of the underlying enforcement action (except that it involved a “multi-million dollar fraud”) nor the identity of the whistleblower was revealed. In its press release announcing the award, the SEC indicated that the whistleblower “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.”³

The whistleblower received an award equal to 30% of the monetary sanctions collected—the maximum percentage allowed. As of August 21, approximately \$150,000 in sanctions had been collected and, therefore, the whistleblower was entitled to an initial distribution of nearly \$50,000; however, as additional sanctions are collected by the SEC, the whistleblower will also be entitled to 30% of such additional amounts. Thus, there is a potential for the whistleblower to receive a much larger award, perhaps a total of \$300,000 or more, from sanctions already imposed but not yet collected, as well as possible additional sanctions against other defendants in the action.

The amount of this long-awaited first award under the much publicized new program is hardly overwhelming. Nonetheless, there are a few things to be said. First, perhaps as a counter to adverse publicity the SEC received earlier in the year when it inadvertently revealed a whistleblower’s identity, the agency’s announcement yesterday went to some pains to guard this tipster’s anonymity. This should send a salutary message to other would-be informants. Second, because the SEC chose to say so little about the role of the whistleblower, the nature of the case or why the award was given, the matter provides little insight as to how the SEC is administering the program. It is true, as the SEC noted in its release, that the Dodd-Frank Act imposes a specific burden on the agency to protect a whistleblower’s identity. But the release does not specify, for example, whether the whistleblower was a prospective investor in the fraud, an employee of the issuer or involved in third party selling

¹ SEC Exchange Act Release No. 67698 (Aug. 21, 2012), Whistleblower Award Proceeding File No. 2012-1. The SEC’s related press release is available [here](#).

² The Dodd-Frank Act mandated that the SEC create a whistleblower program to reward individuals who provide the SEC information about potential violations of the federal securities laws that leads to successful SEC enforcement actions resulting in more than \$1 million in monetary sanctions. Awards may range from 10% to 30% of monetary recoveries and are determined in the SEC’s discretion. See SEC Exchange Act Release No. 64545 (May 25, 2011); see also “Final SEC Whistleblower Rules: What Will They Mean in Practice?”, *Covington Advisory* (June 2, 2011), found [here](#).

³ The SEC’s press release also noted that the SEC rejected a claim from a second individual seeking an award in the same matter because the information provided did not lead to or significantly contribute to the SEC’s enforcement action.

efforts or otherwise participated in the fraud. It is unclear if this involved a new stock offering, efforts to hype sales in outstanding securities of an existing company or some sort of Ponzi scheme. While the SEC staff has been quick to point to the increase in numbers and quality of tips resulting from the new whistleblower program, the first award under the program will be no more than a preface to the ultimate story to come.

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