



Workplace Whistleblower

SEC Whistleblower Report Shows Increase In Tips

By Ada W. Dolph, Adam R. Young and Craig B. Simonsen

The Securities and Exchange Commission's (SEC) Office of the Whistleblower (Office) recently released its [2015 Annual Report on the Dodd-Frank Whistleblower Program](#) (Report) (November 16, 2015).

In Fiscal Year 2015 alone, the Commission paid more than \$37 million to reward eight whistleblowers for their provision of original information that led to successful Commission enforcement actions with monetary sanctions totaling over \$1 million; one whistleblower received over \$30 million in a single award. This flurry of awards followed the Commission's active Fiscal Year 2014, in which the Commission authorized fourteen whistleblower awards and paid nine. The Commission also registered a record year by issuing Final Orders or Preliminary Determinations on over 150 whistleblower award claims.

The Commission received 3,923 whistleblower tips, a 10% increase over Fiscal Year 2014 and nearly a 30% increase over the number of tips received in Fiscal Year 2012, the first year for which there is a full-year of data. The Commission received tips from all 50 states and 95 foreign countries. The most common complaint categories reported by whistleblowers included Corporate Disclosures and Financials (17.5%), Offering Fraud (15.6%), and Manipulation (12.3%). In relative terms, the Commission reported the largest increases in Unregistered Offerings (150, up from 102) Trading and Pricing (213, up from 144) and Market Event (192, up from 139). The Commission reports that it is currently tracking over 700 matters in which a whistleblower's tip has caused an investigation to be opened or which have been forwarded to enforcement staff.

Notably, the Report also indicated that "to date, almost half of the award recipients were current or former employees of the company on which they reported information of wrongdoing." Approximately 80% of those individuals raised their concerns internally to their supervisors or compliance personnel, or understood that their supervisors or compliance personnel knew of the violations, before reporting information to the Commission.

The Report highlighted the Commission's August 4, 2015 guidance clarifying the interaction of the anti-retaliation provisions and the award provisions of the Whistleblower Rules (17 C.F.R § 241) with respect to internal reporting under Dodd-Frank. Though not universally accepted by the federal courts, the Commission has taken the position that whistleblowers who make only internal reports have engaged in protected activity under Dodd-Frank's anti-retaliation provisions. (See our blog on this issue [here](#)).

The Report noted several ground-breaking 2015 decisions, including:

- An April 28, 2015 award in which the Commission provided a maximum whistleblower award in its first anti-retaliation case ([In the Matter of Paradigm Capital Management, Inc. and Candace King Weir](#), File No. 3-15930 (June 16, 2014));
- An April 22, 2015 award of more than one million dollars to a compliance professional. This award was the first under the “substantial injury” exception, which permits awards for a compliance professional’s reports on conduct which the professional had a reasonable basis to believe would “cause substantial injury to the financial interest or property of the entity or investors” ([Order Determining Award Claim](#), Exchange Act Rel. No. 74781, File No. 2015-2 (Apr. 22, 2015));
- An March 2, 2015 award of over \$500,000 to a company officer. This award was the first awarded under an exception permitting awards to an officer who reports information to the Commission more than 120 days after other responsible compliance personnel possessed the information and failed to address the issue adequately. ([Order Determining Award Claim](#), Exchange Act Rel. No. 744404, File No. 2015-1 (Mar. 2, 2015)).

The Report also highlighted the Commission’s 2015 focus on employers’ use of confidentiality, severance, and other kinds of agreements to, in its view, interfere the ability of individuals to report potential wrongdoing to the SEC. From the report, it is clear that assessing confidentiality agreements for compliance with Rule 21F-17(a) will continue to be a top priority for OWB into Fiscal Year 2016.

Employers should take note and revise their form severance agreements accordingly. For more information on the efforts of the Commission in these areas, also see our previous article, “[Aggressive Enforcement Efforts Will Continue After KBR, Per SEC Whistleblower Chief](#).”

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