

CLIENT ALERT

SEC Announces Record \$30-35 Million Whistleblower Award

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The U.S. Securities and Exchange Commission (SEC) announced last week that it is poised to pay out a record-breaking \$30-35 million award to a whistleblower. The previous record payment was \$14 million, and most of the payouts under the Dodd-Frank Act's "bounty" provisions have been well under \$1 million. This latest award demonstrates why every publicly-traded employer should maintain an active compliance program, designed to encourage employees to report potential compliance issues internally.

The SEC's award is significant for two additional reasons beyond its sheer size. First, the whistleblower is a foreign national and many of the alleged violations occurred overseas. This award shows the SEC is not deterred by a number of court decisions that have limited the territorial reach of several laws enforced by the agency. In fact, the SEC included a lengthy footnote in the announcement of the award, articulating its belief that it can make such an award where the information from the whistleblower leads to a successful enforcement action in the United States regardless of where the whistleblower resides or where the actions at issue took place. In so doing, the SEC took the position that the Supreme Court's 2010 decision in *Morrison v. Nat'l Austl. Bank Ltd.*, which limited application of Section 10(b) of the Securities and Exchange Act of 1934 to transactions in securities listed on U.S. exchanges or to domestic transactions in other securities, did not prohibit the award. The SEC argued that because it was able to bring an enforcement action in the United States based on the tipster's information, there was a sufficient territorial nexus to authorize the award. The SEC also stated that the Second Circuit's recent decision in *Liu v. Siemens AG*, which refused to apply Dodd-Frank's anti-retaliation provisions to a foreign national working overseas, was not controlling. Multinational employers should ensure their compliance and reporting programs apply globally, as there will undoubtedly be an uptick of both domestically and internationally sourced tips as a result of the SEC's position on these issues and this massive award.

Second, the SEC noted that the award could have been even larger, but it reduced the amount because the agency believed the whistleblower unreasonably delayed reporting the information. The SEC stated that the whistleblower's delay wrongly caused investors to continue to suffer monetary injury that could have been avoided had the whistleblower come forward earlier. In reducing the award due to the delay, the SEC has arguably incentivized future whistleblowers to bypass internal company reporting programs and immediately report to the SEC as soon as they have knowledge of potential securities violations. Employers should continue to utilize, and internally promote, robust compliance and reporting programs. However, the SEC's award may make it less likely that employers will get an opportunity to address any concerns before the government potentially intervenes.

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