
SEC Whistleblower Bounties: 10 Things Companies Can Do Right Now To Stay Ahead

2011-08-04

Under the Securities and Exchange Commission's new whistleblower program, individuals who report potential securities violations to the SEC may be entitled to a reward of between 10 and 30 percent of any monetary recovery exceeding \$1 million. According to a report issued by the SEC, the agency has set aside \$452 million for whistleblower compensation,¹ which it expects to begin paying out as early as August 12, 2011 when the final rules take effect. Sean McKessy, Chief of the SEC's new Office of the Whistleblower, and his staff have been developing procedures for receiving tips and processing award claims.

SEC officials report that the agency currently receives as many as 100 tips per day from whistleblowers and their attorneys. The SEC will exercise discretion in deciding whether to notify a company of its receipt of a whistleblower complaint. In making its determination, the SEC may consider factors such as the nature of the alleged conduct, whether the whistleblower has already reported internally and whether the alleged conduct involves senior management.

In instances where a whistleblower first reports a potential violation internally, that individual may still be eligible for an award if the whistleblower submits the same information to the SEC within 120 days of providing the information to the company. As a result, companies have an incentive to investigate reports of potential violations quickly while also ensuring compliance with the anti-retaliation protections, which apply irrespective of whether the whistleblower is entitled to an award.

As the SEC's bounty program provides incentives for whistleblowers to report potential wrongdoing directly to the SEC, companies should take steps now to bolster internal reporting and investigative procedures and encourage employees to utilize internal reporting mechanisms. Most importantly, all companies should revisit the "tone at the top" of the enterprise and the basic tenets of their corporate culture, which should always encourage employees to "do the right thing."

What proactive measures should companies consider now?

1. **Enhance the culture of compliance.** Ensure that the existing compliance culture actively

encourages internal reporting and resolution of potential violations. This includes monitoring the "tone at the top" and evenly applying internal policies across all levels.

2. Publicize internal reporting procedures. Internal publicity should promote the value of internal reporting to the company and provide assurances that employees who report potential violations will be taken seriously and not retaliated against.

3. Provide supplemental HR training to supervisors. Ensure that supervisors are adequately trained to respond to employee reports of possible violations quickly and appropriately. Regularly remind supervisors of policies against retaliation and the types of conduct that could be deemed retaliatory. Take steps to ensure that troubled workplace relationships are handled promptly and with care.

4. Strengthen infrastructure for receiving tips. Regularly review corporate hotlines and other internal reporting channels and ensure that employees are aware of how to access these resources. Designate specific individuals within legal and compliance departments to review complaints and respond to whistleblowers.

5. Provide regular opportunities for reporting. Consider using periodic performance evaluation meetings as an opportunity to remind employees of the available mechanisms for internal anonymous reporting.

6. Review existing reporting and disclosure policies to ensure compliance. Ensure that confidentiality agreements neither state nor imply that SEC reporting violates confidentiality obligations.

7. Create an investigative response team. Consider establishing or reinforcing a response team of designated individuals from the legal department to investigate whistleblower complaints. Ensure that individuals on the response team have quick access to electronic data and are trained to handle documents and information in a manner that preserves privilege.

8. Prepare procedures to guide investigations. Establish a clear process for timely investigation of complaints of potential securities violations so that the company may determine whether there is actual misconduct.

9. Establish procedures for communicating with whistleblowers. Provide whistleblowers with timely acknowledgment that the complaint is being addressed. Communicate with the whistleblower periodically throughout the investigative process as appropriate and once a final conclusion has been reached.

10. Keep records of the complaints and how they are handled. Ensure that complaints are properly maintained. Where appropriate, prepare a final report of investigation findings and maintain a log of all corrective action taken.

WilmerHale has established a special [Dodd-Frank Whistleblower Working Group](#) focused on SEC enforcement investigations, corporate compliance and employment issues arising from the new

whistleblower rules. [For a description of the whistleblower rules, see our May 27, 2011 Client Alert here.](#)

¹ U.S. Securities and Exchange Commission, *Annual Report on Whistleblower Program*, 6 (October 2010), www.sec.gov/news/studies/2010/whistleblower_report_to_congress.pdf.

Authors



**William R.
McLucas**

PARTNER

✉ william.mclucas@wilmerhale.com

☎ +1 202 663 6622



**Andrea J.
Robinson**

RETIRED PARTNER

☎ +1 617 526 6000

Mary Jo Johnson

RETIRED PARTNER

☎ +1 617 526 6000

Thomas W. White

RETIRED PARTNER

☎ +1 202 663 6000



**Jonathan
Rosenfeld**

RETIRED PARTNER

✉ jonathan.rosenfeld@wilmerhale.com

☎ +1 617 526 6000