

The SEC Whistleblower Program: *Where Wall Street Answers to Main Street*

We are pleased to bring you this midyear report to highlight key awards, trends and issues of import in the SEC whistleblower arena. It's an exciting time for whistleblowers, and, by extension, investors at large. Since the program's roll-out, the Commission has received nearly 30,000 tips from 119 countries. Most remarkable, as of this writing, the SEC has awarded more than \$384 million to courageous whistleblowers. The program truly has global reach and considerable momentum.

FIRST THINGS FIRST: A REWARDING START

- In March, in a significant case involving a Labaton Sucharow client, the SEC paid \$50 million to two whistleblowers whose high-quality information assisted the agency in bringing a successful [enforcement action](#). One whistleblower received an award of \$37 million and the other received an award of \$13 million.
- A \$4.5 million award was announced in May in an interesting matter of first impression. The whistleblower had first sent an anonymous tip to the employer alleging significant wrongdoing. The whistleblower submitted the same information to the SEC and another agency within 120 days of the initial internal report. The tip prompted the company to review the whistleblower's allegations, conduct an internal investigation and self-report the results to the SEC and the other agency. This was the first time a claimant received an award under the provision of the whistleblower rules, which was designed to incentivize internal reporting by whistleblowers who also report to the SEC within 120 days.
- In June, a bounty of \$3 million was awarded to whistleblowers whose tip launched the SEC's investigation and subsequent enforcement action involving an alleged securities law violation that impacted retail investors. In this case, the whistleblowers also undertook significant and timely steps to have their employer remediate the harm caused by the violations.



\$57.5M

IN THE FIRST HALF
OF 2019, THE
COMMISSION PAID
OUT MORE THAN
\$57.5 MILLION TO
SEC WHISTLEBLOWERS

Looking at the numbers on a year over year basis, yes, 2018 was stronger in the aggregate. But this is attributable to the record-setting award to our clients—\$83 million paid to the whistleblowers whose tips led to the SEC's landmark \$415 million [enforcement action against Merrill Lynch](#). Settlements of this size obviously don't happen every day...or every year.

AROUND THE WORLD IN 180 DAYS

A central—and hugely rewarding—part of our practice involves supporting international efforts to research, implement and enhance whistleblower regimes. By way of example, this past February, the Australian Parliament enacted whistleblowing reforms modeled after key components of the SEC's program. We were privileged to play a small part in this effort after Jordan Thomas's numerous consulting visits to Australia, including to provide testimony to the Joint Parliamentary Committee on Corporations and Financial Services. Similarly, when the Ontario Securities Commission (OSC) convened hearings to discuss proposals for a new whistleblower program in 2015, Jordan provided testimony about the structure and success of the US program. In March, the OSC announced its first bounty, \$7.5 million paid to three whistleblowers. We congratulate our international partners on their work to establish these critical investor protection initiatives.

IN OUR SIGHTS: THE WHISTLEBLOWER'S HOPPER

- We are carefully monitoring H.R. 2515, which would expand protections for whistleblowers seeking legal recourse under Dodd-Frank by prohibiting employers from retaliating against employees who internally report possible violations of the federal securities laws or SEC regulations. This would be an important change because, as a result of a Supreme Court decision in 2018, existing Dodd-Frank protections provide whistleblowers with anti-retaliation protection only if they first report potential violations to the SEC.

The bill has multiple co-sponsors and was referred to the House Committee on Financial Services on May 3, 2019. This proposed legislation is consistent with the SEC's goal of promoting internal reporting, which provides companies with the opportunity to investigate allegations of misconduct, hold appropriate individuals accountable, and implement necessary remediation to prevent future occurrences. Under the proposed legislation, a whistleblower could report internally with the full protections of Dodd-Frank's anti-retaliation provisions.

- In June, the House Committee of Financial Services' Subcommittee on Investor Protection, Entrepreneurship and Capital Markets convened a hearing to examine legislative proposals that would arm regulators and law enforcement to take on [violators of the securities laws](#). Jordan Thomas was invited to speak to the Committee to share his broad perspective garnered from many years in the Enforcement Division of the SEC; his work as a principal architect of the [SEC's whistleblower program](#); and, his experience as the leader of one of the most successful SEC whistleblower practices in the nation.

PREDICTIONS, PREDICTIONS

This summer, as we mark the 9th anniversary since Dodd-Frank was signed into law, we continue to be awed by the success of the SEC Whistleblower Program. (No slight to our partners Rich Levine and Jordan Thomas, who were closely involved in the program's crafting!) It just works, to the benefit of investors, the government and commercial organizations, where fraud has corroded otherwise healthy business practices.

We expect the trend toward joint awards to continue. A successful enforcement action is like a puzzle with hundreds of pieces; no single piece can bring adequate clarity to the whole. As familiarity with the program grows, and high-level insiders see joint awards in the tens of millions of dollars, whistleblowers will break their silence with greater security. Then, law enforcement can synthesize high quality information from multiple sources to maximize the monetary sanction and potential whistleblower award.

Finally, we expect to see continuing public support for whistleblower programs and whistleblowers generally. The SEC's program has illustrated in bold colors that whistleblowers are individuals who, when they see something, say something. Society is mindful that this courage often comes at a high price—potential job loss, financial challenges, reputational harm, to name a few—but that the body politic is willing to stand behind these brave individuals. We will continue to stand with them. Join us.

To speak to one of our SEC whistleblower lawyers or to learn more about our award-winning practice, please visit www.secwhistlebloweradvocate.com or call (212) 907-0836.



H.R. 2515

IN THE CONGRESSIONAL
HOPPER COULD BE A
GAMECHANGER FOR
SEC WHISTLEBLOWERS