

SEC Official Discusses Progress of Whistleblower Program

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Securities and Exchange Commission (“SEC”) Associate Director of Enforcement Stephen Cohen addressed criticisms of the SEC whistleblower program at a panel discussion in New York on April 26, 2013, entitled “Enforcement 2013: Perspectives from Government Agencies.” Much has been made in recent months of the fact that the 20-month old [SEC whistleblower program](#) has paid out just one award, despite having received over 3,000 tips in its first year. Cohen pointed out in the New York meeting that this was no reason for concern. According to an article in [Thomson Reuters](#), Cohen told the audience, “People should take absolutely nothing, absolutely nothing, from the fact that there has been (only) one award.” Cohen continued, “It’s really the wrong question to ask, quite frankly, for a few years at least. The rewards will follow, I’m quite sure of that.” Cohen’s point is a good one, as it generally takes a significant amount of time for the SEC to investigate a tip, take enforcement action, and end up with a successful judgment or judicially approved settlement, particularly when the defendants are large, publicly traded companies with vast resources and formidable teams of lawyers and accountants defending their positions. Cohen also noted that most of the whistleblowers he had talked to, while perhaps being partially motivated by the potential of a financial reward, were people who were simply tired of having management ignore the concerns they raised internally. According to Cohen, “the most common thread ... almost to a T, is that they believed they tried to tell management about the problem and have it corrected, and were not listened to.” Cohen also noted that the whistleblower program has significantly aided the SEC’s enforcement efforts, allowing the commission to focus on specific allegations of wrongdoing, rather than wading through large volume of materials generated by broadly written subpoenas. According to Thomson Reuters, several panelists expressed their concern that companies still might work harder to discredit whistleblowers than address the securities violations that whistleblowers reported them. However, that is exactly the kind of activity that the anti-retaliation provisions in the [Sarbanes-Oxley Act](#) of 2002 (“SOX”) and the Dodd-Frank Act of 2010 were designed to prevent. If courts continue to issue decisions interpreting that legislation to create broad protections from retaliation for whistleblowers, as the Third Circuit did recently in [Wiest v. Lynch](#), it will continue to grow increasingly difficult for companies to retaliate against whistleblowers for raising concerns.