

## **SEC Whistleblower Awards Skyrocket in 2020**

June 2, 2020

The U.S. Securities and Exchange Commission (“SEC”) [announced](#) in early May that it had awarded \$2 million to a whistleblower who provided specific, timely, and credible information regarding a fraudulent scheme related to an ongoing investigation, but about which the SEC was not aware. The award marked the continuation of what has been the most active stretch in the history of the SEC Office of the Whistleblower, with 11 awards totaling nearly \$70 million issued since the beginning of the year. Eight of these awards occurred within a six-week period between March 23 and May 4, 2020.

### **Awards the SEC Office of the Whistleblower has issued in 2020**

- SEC Awards Almost \$2 Million to Whistleblower (May 4, 2020)
- SEC Awards Over \$18 Million to Whistleblower (April 28, 2020)
- SEC Issues \$5 Million Whistleblower Award (April 20, 2020)
- SEC Awards Over \$27 Million to Whistleblower (April 16, 2020)
- SEC Awards Approximately \$2 Million to Whistleblower (April 3, 2020)
- SEC Awards \$450,000 to Whistleblower (March 30, 2020)
- SEC Awards Over \$570,000 to Two Whistleblowers (March 24, 2020)
- SEC Awards Over \$1.6 Million to Whistleblower (March 23, 2020)
- SEC Awards More Than \$7 Million to Whistleblower (Feb. 28, 2020)
- SEC Awards Whistleblowers Whose Information Helped Stop Fraud (Jan. 22, 2020)

This article identifies noteworthy elements of this year’s awards that may help whistleblowers and practitioners better understand what sorts of information may lead to a successful tip or an increased award.

### **Whistleblower Information Still Relevant to Existing SEC Investigations**

The Office of the Whistleblower’s most recent award is instructive. As detailed in the [order](#) accompanying the award, the whistleblower’s tip did not open the investigation into the target of the enforcement action. Rather, it provided new information about which the SEC was not aware that aided the investigation and led to a successful enforcement action. The same was true of one of the whistleblowers who received an [award](#) on January 22, 2020. There is no requirement under the SEC rules that the information provided by a whistleblower must have prompted the investigation leading to the enforcement action—only that the information be “original.” 17 C.F.R. § 21F-4(b)(1).

## **Determining Size of Award: Whistleblower Hardship Taken into Account**

Several of the orders referenced “hardships” experienced by the whistleblower as a result of reporting the securities violations that led to the enforcement action, and the SEC considered these hardships in setting the amount of the award. For instance, the [order](#) leading to the April 20, 2020 announcement of a \$5 million award explained that the claimant “suffered a unique hardship as Claimant was terminated soon after raising concerns internally about the conduct in question with Claimant’s supervisor[.]” The orders underlying the [April 3](#), [March 30](#), and [February 27](#) award announcements also referenced hardships the whistleblower experienced after blowing the whistle. These facts are relevant because among the factors taken into account by the SEC Office of the Whistleblower when determining the size of an award are any “unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action.” 17 C.F.R. § 240.21F-6(a)(2)(vi). Whistleblowers who suffer adverse consequences for doing the right thing may be entitled to greater awards.

## **Eligibility of Internal Whistleblowers and Investors**

Two other awards are worth highlighting. The March 30, 2020 [award](#) went to an individual “with compliance or internal audit responsibilities.” This is noteworthy because employees in such roles are generally excluded from awards under the SEC Whistleblower Program. 17 C.F.R. § 240.21F-4(b)(4)(iii)(B). However, such employees may become eligible for awards if, prior to reporting to the SEC, they first provide the information to “the relevant entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or [their] supervisor”—or had reason to know such individuals already received the information—and then wait for 120 days to elapse following that internal report. 17 C.F.R. § 240.21F-4(b)(4)(v)(C). This rule was created to strike the balance between encouraging such individuals to work within their companies’ compliance departments to give the company a chance to proactively remedy the issue, while still incentivizing those employees to notify the SEC of violations of securities laws if their employers have failed to address the unlawful activity.

In addition, the [order](#) underlying one of the January 22, 2020 awards was unique because it went not to a company insider, but to a harmed investor who lost money in the scheme. Not all whistleblowers come from inside the violating entity. In some cases, company outsiders have enough visibility into the scheme to provide the SEC meaningful original information that either makes the Commission aware of or enhances the SEC’s ability to prosecute the wrongdoing.

There is much to learn from the orders accompanying these awards. But perhaps the biggest takeaway is that this is the most extraordinary five-month stretch in

the history of the SEC Office of the Whistleblower, which appears to be as strong as it has ever been. In sum, the SEC Office of the Whistleblower has awarded over \$67 million to 12 whistleblowers thus far in 2020, and has awarded a total of \$450 million to 82 individuals since it began issuing awards in 2012. That is a remarkable accomplishment and a reminder to whistleblowers and practitioners that this program is alive and well, and that speaking up about wrongdoing may have its rewards.

For more information about the SEC whistleblower award program, please review the firm's [SEC Whistleblower Practice Guide](#).