

SEC Whistleblower Office Makes Additional Award, Denies Others

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An SEC [press release](#) announced that a whistleblower who had already attained an award in 2012 received an additional \$150,000, for a total of \$200,000, after the SEC collected more money from one of the defendants in the case. The award represents 30% of the amount collected by SEC enforcement, the maximum allowed. The press release noted that the SEC is barred from providing information which could expose the identity of the whistleblower.

This announcement is interesting because it obscures the fact that so far in 2014, this is the only award the SEC has allowed after denying three other claims. The denials were not announced by press release. Although difficult to fully determine because of the redactions in the denial orders, it appears that the SEC decided that what the whistleblowers provided did not constitute “original information” as required or did not lead to a successful enforcement of the matter. As the most recent award is merely an add-on, it means that the Office of the Whistleblower has not granted any new awards since October, when a \$14 million payout led to predictions of a tidal wave of awards for 2014. In fiscal 2013, the Office of the Whistleblower reported that it received 3,238 tips, an 8% increase from the prior year, for a total of 6,573 tips since the Office opened, from which only six awards have been granted.

Recently, the chief legal strategist at the Association of Corporate Counsel [urged](#) the SEC to provide guidance in light of remarks by Sean McKessy warning in-house lawyers not to be involved in preparing exit agreements with broad confidentiality provisions that could be viewed as preventing reporting to the SEC, which we discussed [here](#). The need for guidance is important, the article argued, since confidentiality provisions are fairly standard in employee exits and in-house lawyers need to be aware of what the SEC considers to be particularly “bad” language. In light of the absence of details of how SEC determine whistleblower awards, guidance can also be helpful to bolster internal compliance programs for internal reporting.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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