

SEC Whistleblower Award Demonstrates International Scope of Program

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The most interesting element of the SEC's latest whistleblower [award](#), the largest so far at \$30 million, may be the lengthy footnote that explains why the Commission believes an [award](#) payment is appropriate even though the claimant resides in a foreign country.

The SEC order explains that under the Supreme Court Morrison case, a sufficient U.S. territorial nexus may warrant domestic application of a statutory provision even when certain extraterritorial aspects are involved. In the SEC's view, this test is met for purposes of the determining whistleblower claims whenever a claimant's information leads to the successful enforcement by the Commission of a covered action brought in the U.S. concerning violations of the U.S. securities laws. If those "key territorial connections" exists, then it makes no difference to the SEC whether, for example, the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas. The SEC order distinguishes the recent Second Circuit Siemens case, which held there was an insufficient territorial nexus for the anti-retaliation protections to apply to a foreign whistleblower who alleged retaliation about a foreign employer, because the whistleblower award provisions have a different Congressional focus than the anti-retaliation provisions.

The press release announcing the award notes that the award demonstrates the international reach of the whistleblower program, and is the fourth one made to a claimant living outside the U.S. Sean McKessy, Chief of the SEC's Office of the Whistleblower, declared that the award demonstrates the "international breadth" of the program and "whistleblowers from all over the world" should be similarly motivated to provide tips to the SEC.

While the award is sizeable, the claimant asserted that the award is below the average percentage given to others. A downward adjustment was applied because the SEC found that the claimant delayed in reporting the violations. The claimant was purportedly uncertain about whether the SEC would take action, an explanation the SEC found to be unreasonable.

The law firm representing the claimant issued a [release](#), in which it praised not only the SEC but also the F.B.I and the Fraud Division of the Justice Department.

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.

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