

SEC Notes Company's Helpful Voluntary Actions in Whistleblower Case

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The SEC recently alleged that yet another company violated the whistleblower rules with its standard separation agreement, but [the order](#) in the case also noted several positive actions taken by the company which helped determine the SEC's acceptance of the company's settlement offer.

For nearly five years, over a thousand BlackRock employees signed separation agreements that the SEC alleged wrongfully included language requiring a departing employee to waive recovery of incentives for reporting misconduct available under federal statutes, in exchange for receiving separation payments from the company. The SEC noted that the agreement did not prohibit those former employees from communicating directly with the Commission or any other governmental agency regarding potential violations of law.

Specifically, the language stated that by executing the agreements, employees released and discharged the company from all claims for, and waived any right to recovery of, incentives for the reporting of misconduct, including under the Dodd-Frank and Sarbanes-Oxley Acts. Though the SEC acknowledged that it is unaware of any instance in which the agreement prevented former employees from communicating directly with its staff, or that the company took action to enforce these provisions or otherwise prevent employees from talking to regulators, it still determined that the company directly targeted the SEC's whistleblower program by removing "the critically important financial incentives" that are intended to encourage whistleblowers.

In determining to accept the settlement offer, the SEC noted the company's constructive actions. The company had voluntarily revised its separation agreement as part of a regular periodic review and update of its agreements, which removed the offending provision, before being contacted by the Commission. The company also updated its code of business conduct and ethics and other relevant agreements, policies and procedures as part of remedial measures.

In addition, all employees will undergo mandatory annual training that includes understanding their rights under the SEC's whistleblower program, including regarding reporting potential legal violations without obtaining permission from the company, the ability to report violations anonymously and their protections under whistleblower laws. The company must notify the heads of the Asset Management Unit of the Division of Enforcement, with a copy to the Chief of the Office of the Whistleblower, in advance before discontinuing these trainings.

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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