



The Bank Is Open

SEC's Investor Protection Fund Is Poised to Pay Whistleblower Bounties.

The Dodd-Frank Wall Street Reform and Consumer Protection Act directs the U.S. Securities and Exchange Commission (SEC) to make monetary awards, or “bounties,” to individuals who voluntarily provide original information that leads to successful SEC enforcement actions resulting in monetary sanctions of more than \$1 million. With awards in the range of 10 percent to 30 percent of the monetary sanction, the bounty for the employee can be significant, especially in light of recent SEC enforcement actions netting penalties well into the tens of millions of dollars. For example, the first round of the SEC’s Notices of Covered Actions (the mechanism by which the SEC notifies whistleblowers when to submit their claim for a bounty) references the judgment that led to the subsequent monetary penalty against hedge fund manager Raj Rajaratnam in the amount of \$92.8 million. An original source in a case such as Rajaratnam has the potential to receive up to 30 percent of the SEC’s penalty.

Dodd-Frank’s whistleblower bounty provision caused quite a stir. Many predicted an onslaught of SEC enforcement activity and internal corporate investigations. To get ready, plaintiffs’ law firms established whistleblower practice groups and hired former SEC enforcement

It is very likely that the SEC will use its first few awards as publicity for its program and to entice more tips from whistleblowers. These tips, in turn, are bound to result in increased SEC enforcement.

officials. Corporate firms published client alerts and held seminars. But since the promulgation of the SEC’s final rule, which was itself controversial for not requiring a whistleblower to report internally before going to the SEC, things have seemed relatively quiet on the whistleblower front. The quiet, however, is likely just the calm before the storm.

Behind the scenes, the SEC has been busy establishing systems and taking in a large number of whistleblower tips. To fund whistleblower awards, Dodd-Frank established the Investor Protection Fund. As of September 30, 2011, the fund had an impressive balance of \$452 million. But before the SEC could dip into the fund, it needed to hire

staff, provide training, and draft internal policies and procedures. It then spent fiscal year 2011 drafting and finalizing proposed rules; creating the Office of the Whistleblower; establishing whistleblower hotlines; launching its whistleblower website; developing its own web-based system for submitting tips, complaints and referrals; and engaging in a large public relations campaign to raise awareness of the program. In August 2011, the system went live, and during the next seven weeks the SEC received 334 whistleblower tips, two of which were from Washington state. Also in August 2011, the SEC began notifying whistleblowers of potential eligibility for bounties related to “Covered Actions” listed on its website.

What does all this mean for Washington businesses? After a significant amount of time establishing a robust Office of the Whistleblower and convenient means for reporting potential violations online, the SEC is poised to begin to award payments from its massive fund. It is very likely that the SEC will use its first few awards as publicity for its program and to entice more tips from whistleblowers. One plaintiffs’ firm even developed its own proprietary “Whistleblower Eligibility Calculator” that assesses a putative whistleblower’s eligibility for collecting a bounty. The SEC’s publicity of its payments, and plaintiffs’ lawyers’ creativity and initiative, are bound to increase the number of whistleblower tips received. These tips, in turn, are bound to result in increased SEC enforcement and internal corporate investigative activity, and impact a growing number of companies and their directors and officers. Companies need to be ready to mobilize quickly; they should assume that every internal complaint they receive has also been reported through the convenient SEC tip line.

DOUGLAS W. GREENE is a shareholder at Lane Powell and co-chair of the firm’s securities litigation and director and officer liability practice groups. He can be reached at greened@lanepowell.com or 206.223.6103. **MICHELLE PETERSON** is a shareholder at Lane Powell, where she focuses her practice in the areas of white collar criminal defense, civil litigation and government investigations. She can be reached at petersonm@lanepowell.com or 206.223.3987.