

Public Statement

Statement on Whistleblower Program 2019 Annual Report to Congress



Chairman Jay Clayton

Nov. 15, 2019

Today, the SEC's Office of the Whistleblower (OWB) issued its Whistleblower Program Fiscal Year (FY) 2019 Annual Report to Congress (Annual Report). FY 2019 marks the eighth full year for OWB. Our whistleblower program has made substantial progress since its inception and has proven to be an invaluable component of our enforcement efforts. From the receipt of a tip, complaint or referral (TCR), to the opening of an enforcement matter, through resolution of that matter and, ultimately, a whistleblower award determination, we are continuing to move more efficiently and with greater effect. This progress is due in large part to continued coordination among our Division of Enforcement, OWB, and other Divisions and Offices of the Commission.

We also recognize, as is particularly the case with any new program, there is room for improvement. We know that the more quickly and effectively we pursue an actionable TCR, the better it is for our markets, our Main Street investors and, importantly, the ongoing effectiveness of our whistleblower program. This is a virtuous cycle.

Proposed Amendments to our Whistleblower Program Rules

In 2018, building upon our years of experience administering the program, and also to address the Supreme Court ruling in *Digital Realty Trust, Inc. v. Somers*,^[1] we proposed amendments designed to improve the efficiency and effectiveness of our whistleblower program.^[2] The amendments were largely designed to allow us to get money into the hands of more whistleblowers faster. One aspect of that proposal has received significant attention: a proposed framework to guide the exercise of discretion by the Commission in the case of awards over \$30 million. This proposal was mischaracterized by some as a "cap." The proposed provision was not a "cap," it could not and was not intended to operate as a "cap," and I do not support a cap. Congress vested in the Commission the authority and responsibility to use our good judgment and experience to determine award amounts within the range of 10-30% prescribed by Congress, and we should do just that.^[3]

This mischaracterization did have a salutary effect. The whistleblower bar, members of Congress and other commentators brought to my attention the fact that the mischaracterization raised uncertainty about the agency's commitment to the program. They explained that uncertainty, including even uncertainty regarding the award process for very large awards, could deter potential whistleblowers from coming forward. This reality of human emotion and decision-making under uncertainty is not lost on me. While all cases are different and award processes that incorporate the exercise of discretion have an inherent level of imprecision, it is my aim that, as we gain greater experience with the whistleblower program, the award process will be more transparent. Importantly, such a dynamic should lead to a greater number of actionable TCRs, resulting in awards to meritorious whistleblowers in a more efficient manner.

I expect the Commission to consider final rules in the near future. The proposed amendments to the whistleblower rules provide opportunities for granting awards to whistleblowers faster and more efficiently. It is my expectation that such enhancements to our rules will continue to incentivize whistleblowers to provide valuable information to aid the Commission in protecting investors and markets.

[1] 138 S. Ct. 767 (2018).

[2] Amendments to the Commission's Whistleblower Program Rules, 83 Fed. Reg. 34,702 (proposed July 20, 2018).

[3] As such, the only "cap" on a whistleblower award is the one imposed by the 30% threshold established in Section 21F of the Exchange Act.