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in 'Eye-Popping' SEC Award Puts Corporate and Whistleblowers' Lawyers on Alert



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Securities Litigation



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What You Need to Know

- The record award is being seen as a warning for CEOs and a rainmaker for whistleblower attorneys.
- Companies need to reassess their internal whistleblower programs, corporate attorneys said.
- While headline-making, the award is part and parcel for an increasingly aggressive agency.

A nearly \$280 million award issued by the U.S. Securities and Exchange Commission is leading corporate lawyers to warn clients and could make the work of whistleblower attorneys even more busy in the face of a historically aggressive agency.

The award, [announced](#) Friday in connection with a multiagency, unnamed enforcement action, sent shock waves through the securities law world, according to multiple lawyers who spoke with the NLJ. It's more than double any single previous whistleblower award from the SEC, and it's about \$50 million more than the total awards issued by the agency in 2022.

“It's remarkable the SEC just made someone a quarter billionaire,” said one securities attorney who declined to be quoted by name.

But for lawyers who work with companies on the receiving end of such investigations, they hope it serves as a wake-up call for those they serve.

“There are a lot of important conversations that need to continue to happen with clients,” said Morrison & Foerster partner Haima Marlier. “These awards are now so large the whistleblower program has to be part of the conversation.”

Specifics on the award are few. According to a heavily redacted [order](#) signed by SEC Secretary Vanessa Countryman, three claimants tried to blow the whistle on a multiagency enforcement action but only one earned an award.

The single claimant’s information was “significant, as it caused enforcement staff responsible for the covered action to expand the investigation ... [and] saved significant time and resources ... and provided substantial, ongoing assistance,” the order stated.

To stay ahead of such actions, Marlier warned companies must start paying more attention to their compliance culture and rethink their internal whistleblowing reporting systems. This includes making sure employees feel comfortable submitting complaints to the company in the first place.

“That gives the company an opportunity to do an internal investigation and address it before the SEC hears about it,” she said.

But for whistleblower attorneys such as Jason Zuckerman, it’s a sign that it’s a great time to be in the business of representing those with complaints about their employer’s securities violations.

“The penalties being levied by the SEC under current leadership are more robust than those levied by prior administrations,” Zuckerman said, before noting that whistleblowing is a rare bipartisan issue more broadly.

That support is most visible in recent bipartisan legislative efforts being carried by Sens. Chuck Grassley, R-Iowa, and Elizabeth Warren, D-Massachusetts.

“Our legislation is urgently needed to hold bad actors accountable,” Grassley said when he [announced](#) the effort in 2022 to increase possible awards and speed the process of granting awards to legitimate complainants.

That speed in issuing awards, and in the investigation process itself, fueled numerous theories from securities lawyers about the source of last week’s announcement. While some news outlets tried to link the prize to recent enforcement actions, Zuckerman said this action could have been initiated nearly eight years ago.

“If you’ve got an action being taken by or involving multiple agencies, it can take even longer,” he said.

Kohn, Kohn & Colapinto founding partner Stephen M. Kohn, another securities whistleblower attorney who has been in the practice space for decades, welcomed the legislative effort as a boon for an industry he said once languished.

“Thirty years ago whistleblowers were hammered, living out of their cars, and judgments were modest,” Kohn said, noting recent developments represent a “radical change” for whistleblowing. But even changes in recent years are having an impact; whistleblower complaints continue to [increase by multitudes](#) since the program started in 2012.

Back at the businesses who seek to avoid such sanctions, lawyers advocated for firms to always keep whistleblower concerns at the top of their clients’ dockets, especially because of the benefit such leaks can give the SEC.

“A whistleblower who brings a well-founded, legitimate complaint of securities laws violations to the agencies is a godsend to the investigation team,” said Marlier, a former SEC investigator. That was made all the more clear in the order issued Friday, and it’s something that stood out to practitioners.

“This is a great example of the enforcement machine moving at its highest and best capacity,” said another unnamed securities lawyer of the interagency cooperation that led to the award. But such headline-making awards are also becoming less of a surprise under the breakneck enforcement pace of SEC Chair Gary Gensler.

One method of addressing future whistleblowing, according to Marlier, is considering the impact work from home has on an employee's link to the company. If an employee works in a large open office space, management can hear the employees talking or see what's on their computer screen as they walk by.

"All of those considerations about confidentiality are mitigated when someone works from home," she said, noting the importance of striking a balance to keep employees happy enough to report potential violations and misconduct internally, as opposed to the SEC.

For those facing future complaints, Marlier said confronting the issue in a holistic manner is also key by "bringing in compliance and investigations teams to examine what policies, procedures and culture organizations have in place to receive, process and aggregate whistleblower complaints."

But for attorneys such as Kohn, the award should put every CEO and member of the C-suite on notice.

"Now, every single executive who weighs the cost/benefit of illegal securities activity, they need to take into account that anyone around that table can report that crime and make more money than is imaginable," he said.

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