

SEC Boosts Whistleblower Incentives After Two Record-Breaking Years

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On August 26, the Securities and Exchange Commission (SEC) quietly adopted two significant changes to the rules governing its whistleblower program, as proposed in February 2022. These reverse amendments to the same rules implemented in 2020 and reflect the commission's effort to further incentivize and reward tipsters for information about potential violations of the securities laws. If the headlining \$739 million in awards distributed to 147 program participants during 2020 and 2021 alone is not enough, the expanded incentives for potential whistleblowers come in two forms.

First, the SEC amended Rule 21F-3 to allow the SEC to pay whistleblower awards for certain actions brought by another authority that has a whistleblower award program. Specifically, the SEC now can pay "related action awards" if the other authority's program "is not comparable to the Commission's program" or if the related action award would be for less than \$5 million. The amended Rule 21F-3 thus jettisons the requirement that to be "related" and eligible for SEC administered-funds, the SEC's own whistleblower program must have a more direct and relevant connection to the underlying action.

Second, the SEC amended Rule 21F-6 to eliminate the commission's authority to consider the dollar amount of a potential award for the purpose of decreasing it. In other words, when the commission considers the sheer size of a potential award as grounds to change the amount, it may do so only in one direction — up.

In sum, these amendments further boost the SEC's lure and prominence in policing white collar malfeasance, promising potential whistleblowers no disadvantage for cooperating with multiple law enforcement agencies and ensuring that the information the commission receives directly or indirectly has maximum impact, both at the investigatory and publicly interesting award stages.

Combined with fresh frustrations in the hotly disputed return-to-work era, now is the time to review your compliance program. Companies should ensure that compliance is resourced, empowered, and prepared to foster reporting by employees and to address complaints internally and swiftly, before they are raised with the SEC, to minimize potential issues.

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