

Client Alert

October 2022

SEC Expands Whistleblower Program to Other Agencies in Related Actions to Incentivize Whistleblower Tips

Effective October 3, 2022, the Securities and Exchange Commission (the “SEC”) adopted two amendments to the rules governing its whistleblower program. The first amendment’s most significant change allows the SEC to pay whistleblowers for their information and assistance in connection with non-SEC actions in additional circumstances. The second amendment affirms the SEC’s authority to consider the dollar amount of a potential award for the limited purpose of increasing an award.

The first amendment is powerful, and a game changer. The change to the SEC recovery rules expands the circumstances in which a whistleblower who assisted in a related action, meaning in an investigation undertaken by a sister agency through a referral to the other agency, such as the CFTC, or even the DOJ, can receive an award from the SEC directly for that related action rather than from the other agency’s whistleblower program. Specifically, the SEC amended Rule 21F-3 to allow the SEC to pay whistleblower awards for certain actions brought by other entities, including designated federal agencies, in cases where those awards might otherwise be paid under the other agency’s whistleblower program. However, many of these agencies heretofore do not have any reward program at all – and hence, the change may allow whistleblowers to seek a recovery from the SEC when another agency, with a lesser program, or no award program at all, investigates and brings an action. The amendments allow for such awards when the other entity’s program is not comparable to the SEC’s own program or if the maximum award that the SEC could pay on the related action would not exceed \$5 million.

Further, under the second amendment, when the SEC considers the size of the would-be award as grounds to change the award amount, it can do so only to increase the award, and not to decrease it.

The SEC’s whistleblower program was established in 2010 to encourage individuals to report high-quality tips to the SEC and help the agency detect wrongdoing and better protect investors and the marketplace. The

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program has made significant contributions to the effectiveness of the agency's enforcement of the federal securities laws. Since the program's inception, enforcement matters brought using original information from meritorious whistleblowers have resulted in orders for more than \$5 billion in total monetary sanctions, and the SEC has awarded more than \$1.3 billion to such whistleblowers under the program.

The SEC's whistleblower rule amendments are now in effect, and could potentially greatly expand the landscape for potential recoveries, especially when the case is made by a governmental agency other than the SEC.

Please contact the Olshan attorney with whom you regularly work or the attorney listed below if you would like to discuss further or have questions.

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