

New rules could mean big bounties for corporate whistleblowers

New rules have authorized the Securities and Exchange Commission to expand the eligibility for corporate whistleblower cash rewards.



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The SEC recently issued final rules to implement the whistleblower provisions enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Effective Aug. 12, 2011, these new rules expanded the SEC's authority to reward whistleblowers (which previously was limited

to tips on insider-trading cases). They are designed to encourage those who reasonably believe a violation of the federal securities laws has occurred to report the suspected violation to the SEC. Additionally, the rules authorize the SEC to pay rewards to tipsters who provide information to the SEC which lead to actions resulting in collections exceeding \$1 million.

der the new rules is between 10 and 30 percent of the total sanction collected in an action. This means that a tipster could receive a reward between \$100,000 and \$300,000, assuming that the SEC is able to collect the minimum sanction for reporting a violation of the securities laws. These rules do not require the tipster to report suspected violations internally before reporting a suspected violation to the SEC. They also prohibit retaliation by employers against individuals who report suspected violations to the SEC. If an employer discharges, demotes, suspends, threatens, harasses or in any other manner discriminates against a tipster, the employer will be

sanctioned.

Some companies worry the new rules may undermine their internal compliance programs. They also are concerned that although the large bounties may increase the number of complaints the SEC receives, the financial incentives may not lead to more reliable tips.

The U.S. Chamber of Commerce released a statement that it was unhappy with the new rules because the SEC has "put trial lawyer profits ahead of effective compliance and corporate governance." What's more, it is considering filing an appeal to block the rules.

To avoid the risks presented by the new whistleblower rules, companies

might take the following steps:

- Review compliance and ethics programs to ensure those programs allow the company to quickly and effectively identify and handle possible misconduct;
- Consistently enforce these programs, providing regular compliance training to employees (including management);
- Create a compliance hotline; and
- Update their compliance program as necessary.

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To be eligible to collect a whistleblower reward from the SEC, a tipster must:

- be an individual (or multiple individuals acting jointly) who provides, information relating to a suspected violation of the securities laws to the SEC;
- be an individual who reports wrongdoing to the company, and the company, in turn, reports it to the SEC;
- provide the SEC "original" information — information that is derived from the independent knowledge or analysis of the whistleblower. The SEC cannot have received this information from any other source, unless the whistleblower is the original source of the information. Furthermore, this information must not exclusively come from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information; and
- provide the information "voluntarily" — without a prior obligation to provide information to the SEC or in response to a request, inquiry or demand by the SEC in connection with an investigation.

The SEC will determine the amount of an award after considering the following factors:

- significance of the information provided by the tipster to the success of the action;
- degree of assistance provided by the whistleblower (and any legal representative) in an action;
- programmatic interest of the SEC in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and
- such additional relevant factors as the SEC may establish.

The amount of an award payable un-