

# SEC Whistleblower Law

## What is the SEC Whistleblower Program?

The Whistleblower Program was created by Congress to provide monetary incentives for individuals to come forward and report possible violations of the federal securities laws to the SEC. Under the program eligible **whistleblowers** (defined below) are **entitled to an award of between 10% and 30% of the monetary sanctions collected** in actions brought by the SEC and related actions brought by other regulatory and law enforcement authorities.

The Program also prohibits retaliation by employers against employees who provide the SEC with information about possible securities violations.

If you feel you have a valid claim of SEC fraud of over \$5 Million, please [contact](#) the SEC WHISTLEBLOWER ATTORNEYS at the Law Offices of James R. Tucker, P.C. or call 214-505-0097 for a free consultation.

## Who is an eligible whistleblower?

An "eligible whistleblower" is a person who voluntarily provides the SEC through his or her attorney or otherwise with original information about a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur. The information provided must lead to a successful SEC action resulting in an order of monetary sanctions exceeding \$1 million. One or more people are allowed to act as a whistleblower, but companies or organizations cannot qualify as whistleblowers. You are NOT required to be an employee of the company to submit information about that company. [See Rule 21F-2.](#)

## What does it mean to "voluntarily" provide information?

Your information is provided "voluntarily" if you provide it to the SEC or another regulatory or law enforcement authority before (i) the SEC requests it from you or your lawyer or (ii) Congress, another regulatory or enforcement agency or self-regulatory organization (such as FINRA) asks you to provide the information in connection with an investigation or certain examinations or inspections. [See Rule 21F-4\(a\).](#)

## What is "original information?"

"Original information" is information derived from your independent knowledge (facts known to you that are not derived from publicly available sources) or independent analysis (evaluation of information that may be publicly available but which reveals information that is not generally known) that is not already known by the SEC. So if the SEC received your information previously from another person, that information will not be original information unless you were the original source of the information that the other person submitted. [See Rule 21F-4\(b\)\(1\).](#)

## **How might my information "lead to" a successful SEC action?**

Your information satisfies the "led to" criterion if your information causes the SEC to open a new investigation, re-open a previously closed investigation or pursue a new line of inquiry in connection with an ongoing investigation, and the SEC brings a successful enforcement action based at least in part on the information you provided. Additionally, you may still be eligible if your information relates to an ongoing examination or investigation, if the information you provide significantly contributes to the success of the SEC resulting in enforcement action. You may also be eligible if you report your information internally first to your company, and the company later reports your information to the SEC, or reports the results of an internal investigation that was prompted by your information, as long as you also report directly to the SEC through your attorney or otherwise within 120 days. [See Rule 21F-4\(c\)](#).

## **I work at a company with an internal compliance process. Can I report internally and still be eligible for a whistleblower award?**

Although internal reporting is not required to be considered for an award, you may be eligible for an award for information you reported internally if you also report the information to the SEC within 120 days of reporting it internally. Under these circumstances, the SEC will consider your place in line for determining whether your information is "original information" to be the date you reported it internally. In addition, if the company to which you reported conducts an investigation and reports the results to the SEC, you will benefit from all the information the Company's investigation turns up when the SEC is considering whether you should receive an award and if so where the award should fall in the 10% to 30% range. See [Rules 21F-4\(b\)\(7\)](#) and [21F-4\(c\)](#).

## **Can I submit my information anonymously?**

Yes, you may submit anonymously. **To do so, however, you must have an attorney represent you** in connection with your submission. You must also provide the attorney with a completed Form TCR signed under penalty of perjury at the time you make your anonymous submission. [See Rule 21F-7](#).

## **Will the SEC keep my identity confidential?**

Whether or not you seek anonymity, the SEC is committed to protecting your identity to the fullest extent possible. For example, the SEC will not disclose your identity in response to requests under the Freedom of Information Act. However, there are limits on the SEC's ability to shield your identity and in certain circumstances it must disclose it to outside entities. For example, in an administrative or court proceeding, the SEC may be required to produce documents or other information which would reveal your identity. In addition, as part of the SEC's ongoing investigatory responsibilities, it may use information you have provided during the course of our investigation. In appropriate circumstances, the SEC may also provide information, subject to confidentiality requirements, to other governmental or regulatory entities. [See Rule 21F-7](#).

## **How will I learn about the opportunity to apply for an award?**

If the SEC has been working with your attorney if you wish to remain anonymous, the SEC will contact your attorney directly to alert your attorney to the opportunity to apply for an award. See [Rule 21F-10](#). The SEC will also post on its web site notices of actions exceeding \$1 million in sanctions so that anyone who believes they may be eligible will have an opportunity to apply for a whistleblower award.

## **How do I apply for an award?**

Once the case you believe your information led to is posted, your attorney must complete and return [Form WB-APP](#) within 90 calendar days to the Office of the Whistleblower via mail to 100 F Street, NE, Mail Stop 5971, Washington DC 20549, or by fax (703) 813-9322. See [Rule 21F-10](#).

## **What factors does the SEC consider in determining the amount of the award?**

The Rules require that the SEC consider many factors in determining the amount of an award based on the unique facts and circumstances of each case.

The SEC may *increase* the award percentage based on the existence of these factors:

1. The significance of the information you provided to the success of any proceeding brought against wrongdoers.
2. The extent of the assistance you provide in the SEC's investigation and any successful proceeding.
3. The SEC's law enforcement interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of these laws.
4. Whether, and the extent to which, you participated in your company's internal compliance systems, such as, for example, reporting the possible securities violations through internal whistleblower, legal or compliance procedures before, or at the same time, you reported them to us.

The SEC may *reduce* the amount of an award based on these factors:

- If you were a participant in, or culpable for the securities law violation(s) you reported
- If you unreasonably delayed reporting the violation(s) to the SEC.
- If you interfered with your company's internal compliance and reporting systems, such as, for example, making false statements to your compliance department that hindered its efforts to investigate possible wrongdoing. See [Rule 21F-6](#).

## **Can I appeal the SEC's award decision?**

It depends. If the Commission follows the factors described above, authorizes an award, and the amount awarded is between 10% and 30% of the monetary sanctions collected in the Commission or related action, then the Commission's determination of the amount of the award is not appealable. If the Commission denies your application for an award, you may file an appeal in an appropriate United States Court of Appeals within 30 days of the decision being issued. See [Rule 21F-13](#).

## **What rights do I have if my employer retaliates against me for submitting information to the SEC?**

Employers may not discharge, demote, suspend, harass, or in any way discriminate against you because of any lawful act done by you in providing information to us under the whistleblower program or assisting us in any investigation or proceeding based on the information submitted. If you believe that your employer has wrongfully retaliated against you, you may bring a private action in federal court against your employer. If you prevail, you may be entitled to reinstatement, double back pay, litigation costs, expert witness fees, and attorneys fees. The Commission can also take legal action in an enforcement proceeding against any employer who retaliates against a whistleblower for reporting information to us. See [Rule 21F-2](#).

Also, under the Sarbanes-Oxley Act, you may be entitled to file a complaint with the Department of Labor if you are retaliated against for reporting possible securities law violations, including making internal reports to your company.

## **But I am an Attorney--Can I Ethically Report SEC Fraud?**

In most cases, the answer is yes! At one time, an attorney's duty to maintain corporate clients' confidences, even in the face of anticipated or ongoing corporate wrongdoing, was thought to be virtually absolute. But that changed over time, as relevant rules and laws gave lawyers greater discretion to make public disclosures to avert corporate clients' misconduct. And now, following the enactment of the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), attorneys will sometimes have not only discretion but a financial incentive to blow the whistle, as well as anti-retaliation protections when they do so.

## **PRESS RELEASE ANNOUNCING THE SEC WHISTLEBLOWER PROGRAM:**

### **SEC Adopts Rules to Establish Whistleblower Program**

#### **FOR IMMEDIATE RELEASE**

Washington, D.C., May 25, 2011 – The Securities and Exchange Commission today adopted rules to create a whistleblower program that rewards individuals who provide the agency with high-quality tips that lead to successful enforcement actions.

The new SEC whistleblower program, implemented under Section 922 of the Dodd-Frank Act, is primarily intended to reward individuals who act early to expose violations and who provide significant evidence that helps the SEC bring successful cases.

To be considered for an award, the SEC's rules require that a whistleblower must voluntarily provide the SEC with original information that leads to the successful enforcement by the SEC of a federal court or administrative action in which the SEC obtains monetary sanctions totaling more than \$1 million.

"For an agency with limited resources like the SEC, it is critical to be able to leverage the resources of people who may have first-hand information about violations of the securities laws," said SEC Chairman Mary L. Schapiro. "While the SEC has a history of receiving a high volume of tips and complaints, the quality of the tips we have received has been better since Dodd-Frank became law. We expect this trend to continue, and these final rules map out simplified and transparent procedures for whistleblowers to provide us critical information."

## **Blow the Whistle on SEC Fraud**

Individuals with knowledge of fraud committed in violation of the SEC Whistleblower Law may be able to blow the whistle on this kind of fraud using the SEC whistleblower reward program. Whistleblowers play a critical role in bringing this type of fraud to light and holding wrongdoers accountable when they try to cheat the system.

To talk with me about your SEC fraud case, call my Dallas law offices at 214-505-0097 or contact me online. Consultations with a Dallas County SEC Whistleblower attorney are free and confidential. I handle these types of cases on a contingent fee basis, meaning you owe me no legal fees or expenses unless I obtain a recovery for you.