



SEC Cements Status As Go-To Whistleblower Agency

By Stephanie Russell-Kraft

New York (September 22, 2014, 8:45 PM ET) -- The U.S. [Securities and Exchange Commission](#) on Monday announced plans to pay an unnamed foreign national more than \$30 million for information that led to an enforcement action, shaking off criticism that a previous \$14 million award was a fluke and cementing its role as the go-to international regulatory agency for would-be tipsters.

The award, which will range from \$30 million to \$35 million, eclipsed the agency's previous record award of \$14 million in October 2013 and sent a clear message to the securities industry: At the SEC, it's all about the whistleblower.

The tipster in question, whose identity remains unknown, previously sought to come forward in other countries, but decided against it because there was no guarantee of his anonymity, according to his lawyer, Erika A. Kelton of [Phillips & Cohen LLP](#).

"No other country offered that until the United States did with Dodd-Frank, and once that was in place, he stepped forward," she said. "Let's face it, the track record of the SEC before that time with respect to taking whistleblowers seriously hadn't been all that terrific."

The SEC's Office of the Whistleblower was authorized by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act to provide monetary awards to individuals who provide "high-quality original information" leading to an enforcement action with more than \$1 million in sanctions. But the agency's unprecedented ability to protect individuals from retaliation and public scrutiny is what has set it apart, according to [Motley Rice LLC's Rebecca Katz](#).

"The SEC whistleblower program is in a league by itself," said Katz, who represents whistleblowers. "If you want to be anonymous, that's the one you should go with. It also has a fairly decent award."

And as Monday's award shows, that reputation has already begun to spread around the world.

"I think that more and more international whistleblowers will report in the U.S. as opposed to overseas because the incentives and protections are strong here," said Jordan Thomas, chair of the whistleblower protection practice at [Labaton Sucharow LLP](#).

In its last annual report, the SEC said 11 percent of its tips had come from overseas whistleblowers, and some attorneys expect that number to increase when the agency submits its next report to Congress this fall.

The more foreign whistleblowers that come forward in the U.S., the more foreign authorities might consider similar programs, according to Thomas.

"If foreign securities regulators and financial regulators start to realize that their business is starting to come across the pond and the SEC is bringing enforcement actions about conduct in their backyard, they'll be much more open to setting up similar programs in their country," Thomas said.

In 2011, the U.K. Serious Fraud Office launched a whistleblowing hotline, SFO Confidential. But the program does not include monetary awards for whistleblowers, and British regulators seem unlikely to start paying their tipsters anytime soon.

In a joint study with the Bank of England's [Prudential Regulation Authority](#), the U.K. Financial Conduct

Authority said in June that it had found no evidence that paying whistleblowers leads to more or better tips, calling into question the financial incentives used by U.S. regulators under the Dodd-Frank Act.

But those findings are clearly contradicted by the SEC's success rate, according to [Constantine Cannon LLP](#) partner Gordon Schnell.

"To suggest that it's not working here makes me think that they didn't study the U.S. system very well," said Schnell, who represents whistleblowers in securities fraud and Foreign Corrupt Practices Act cases. "The SEC is walking proof that these awards really do work."

While the whistleblower office started out slow, issuing only one award at the very end of its first year, it has in the past two years become a [force to be reckoned with](#), Schnell said.

It remains to be seen if the SEC will drop any more big news before the 2014 fiscal year ends next week, but experts like Schnell and Lloyd Chinn, head of [Proskauer Rose LLP's](#) whistleblowing and retaliation group, expect that the number and size of the agency's whistleblower awards will continue to increase in the coming year.

"There were people who, for a time, questioned the SEC's commitment to this program, and there were others who questioned whether they were getting any tips of value," Chinn said.

Those skeptics should be swayed by a \$30 million award, he added.

"For any remaining doubters, I think this should be a sufficient wake-up call," Chinn said.