



Lawyers Weigh In On SEC's Record Whistleblower Award

New York (September 22, 2014, 7:35 PM ET) -- The U.S. [Securities and Exchange Commission](#) on Monday said that it planned to [award more the \\$30 million](#) to a corporate whistleblower, more than doubling its previous record payout and setting the securities bar abuzz. Here, attorneys tell Law360 why they believe the award is significant.

Jeffrey Alberts, [Pryor Cashman LLP](#), former Assistant U.S. Attorney



"This award continues the trend of the government paying top dollar for employees to report their employers' wrongdoing. Just last week, Attorney General Holder asked Congress to increase the limit on whistleblower rewards under the Financial Institutions Reform, Recovery and Enforcement Act, arguing that \$1.6 million was not enough to motivate employees to report wrongdoing. These awards create incentives for employees to report wrongdoing despite concerns about the impact on their careers. They also create incentives for employees to exaggerate allegations of wrongdoing. As whistleblower awards balloon, one has to question whether the government is striking the right balance."

Jeff J. Ansley, [Bell Nunnally & Martin LLP](#)

"The significance of this Dodd-Frank whistleblower award cannot be easily overstated. More than double the amount of the largest past award handed out by the SEC under the statute, the magnitude of this award highlights the Commission's ongoing commitment to grow its still-new whistleblower incentive program after its admittedly slow start. As the SEC knows, the best and fastest way to do that is to create significant financial incentives for potential whistleblowers, both inside and outside of companies, to report financial fraud when they become aware of it. Paying out — and publishing — large awards like this one accomplish just that."

George W. "Tres" Arnett, [McCarter & English LLP](#)



"The SEC's strong signal that it is upping the ante on whistleblowing gives companies 30 million reasons to develop internal cultures of listening to — and truly hearing — employees who raise concerns. Beyond listening, companies must be prepared to act upon employees' legitimate complaints. This goes beyond establishing and promulgating compliance policies — which is bare minimum — to creating cultures that truly encourage expressions of concern without fear of retaliation. Employees with concerns have two essential choices — complain internally or blow the whistle to the SEC — and now more than ever, companies should do everything possible to encourage the former."

Tammy P. Bieber, [Thompson Hine LLP](#)

"Given the whistleblower program's significance to the SEC's enforcement efforts — which the SEC has stated provides it with information closer in time to the complained-of misconduct and saves investigative resources by pinpointing the relevant inquiry — the SEC is likely to continue to pay generous awards to maintain the flow of information. And, as the program continues gaining traction, such awards will be more frequent. From an issuer's perspective, awards this size obviously provide tremendous enticement for employees to report out. To counter that carrot companies must have robust whistleblower procedures that incentivize internal reporting and a response



mechanism in place so that tips are investigated and resolved promptly and efficiently.”

Alex Bourelly, [Baker Botts LLP](#)

“The amount of the award is nothing short of stunning and will certainly encourage some public company employees to bypass the up-the-chain reporting process. This could also have the effect of pressuring companies to investigate and report potential wrong-doing more quickly.”

Michael Bramnick, LRN



“This shouldn’t surprise anyone. Commission Chairwoman Mary Jo White has made no bones about wanting to encourage those with information to come forward through the use of, among other things, incentives like whistleblower awards. As I’ve written previously, with a thoughtful, values-based approach, though, this award can and should be a catalyst to motivate companies towards better communication and governance as a whistleblower mitigation strategy through constructing and sustaining meaningful relationships at your company, shifting employees’ behavior through transparency, and encouraging speaking out at all levels of the company. These are all value-centric behaviors that, if utilized effectively and extensively, can go a long way toward building confidence in a company and its attendant values. Being confident in what your company stands for, and then ensuring that it executes consistent with those values, should provide a measure of assurance that any

concerns raised will be fully and completely addressed by the company, mitigating the SEC whistleblower program’s impact.”

Jason Canales, [Moses & Singer LLP](#)



“The \$30 million whistleblower bounty paid on Monday by the Commission to an individual living in a foreign country — the highest paid to date — sends a clear message to the public: Tipsters Wanted, Do Not Delay. The \$30 million dollar award is quite impressive, but more significant is that the bounty would have been higher had the claimant not delayed in reporting violations of the U.S. securities laws. Through this award, the Commission appears to be encouraging whistleblowers, both foreign and domestic, to come out of the woodwork, and to do so sooner rather than later.”

John Carney, [BakerHostetler](#)



“Thirty million dollars is just an unbelievable sum to pay someone for reporting a securities violation — and yet it just happened. Awards of this size go beyond paying individuals to disclose their employees’ misconduct, but also can rewrite business relationships, so that it is more profitable to turn in a corporate customer rather than keeping the relationship. Corporation compliance and ethics can seem like expensive programs, but compared to the growing whistleblower threat, it’s money well spent.”

David J. Elliott, [Day Pitney LLP](#)

“The recently announced \$30 million award should further incentivize whistleblowers to come forward. The award, the fourth to be given to an informant living in a foreign country, is more than double the Commission’s highest previous award. The SEC seems clearly to be sending a message that it is prepared to pay substantial sums to whistleblowers with credible information that leads to the prosecution of and recovery in substantial enforcement actions. The increase in Fiscal Year 2013 of whistleblower reports would seem to support this conclusion.”

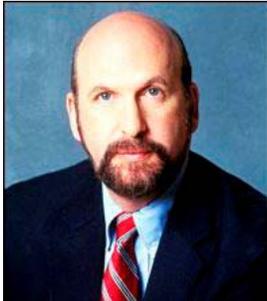


Nathan Garrett, Graves Garrett LLC, former federal prosecutor



"In short, there are some things only money can give you, and in this case, it's information and a lot of it. Publicity around this level of award will, without question, elevate the interest of prospective whistleblowers across the federal spectrum. But, with the good comes the bad, and the amount of useless, misleading or otherwise unreliable information will increase at an equally accelerated rate. I assure you, there are federal prosecutors lamenting this decision. While the stick has always been well defined, the carrot has new meaning."

Neil Getnick, [Getnick & Getnick LLP](#)



"Today's SEC whistleblower award, the largest so far, is a window on the future. The effective combination of whistleblowers, their counsel, and the SEC, has opened up a new era of global financial enforcement. The SEC whistleblower law is the great equalizer, developing reliable information, matching it up with public resources, and incentivizing integrity."

Eugene Goldman, [McDermott Will & Emery LLP](#), former SEC enforcement officer

"The SEC's order determining the award is significant in two respects. First, it confirms that no matter where a whistleblower is in the world, the individual can collect a bounty if his/her information leads to a successful enforcement action. The order expressly includes a call to foreign-based employees to report apparent violations, saying it makes no difference whether the claimant is a foreign national or resides overseas. The SEC's encouragement of global whistleblowing emphasizes the importance of having robust compliance mechanisms internationally. Second, the order makes it clear that the SEC will not be happy if the claimant delays reporting information to the agency in a manner it believes harmed investors. The percentage of recovery could have been higher, but the SEC expressed concern with the claimants' delay in reporting the information. It now appears that future awards may be cut even more when none of the delay can be blamed on conduct occurring before the commencement of the SEC's whistleblower program."



Reuben Guttman, [Grant & Eisenhofer PA](#)



"This bounty to a foreign whistleblower is an event in marked contrast to the Second Circuit's recent opinion in the [Siemens](#) case and demonstrates why the anti-retaliation provisions of Dodd-Frank should be extended in all circumstances to foreign whistleblowers who cooperate with the SEC."

Christopher R. Hall, [Saul Ewing LLP](#)

"The SEC by this award seeks to get the same traction from Sarbanes Oxley and Dodd-Frank that the False Claims Act whistleblower award system has given DOJ. Publicly traded companies now, more than ever, must "walk the walk" with regard to their compliance programs."

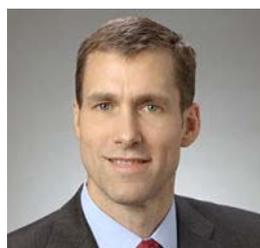


Stephen L. Hill, [Dentons](#)



"This is an extraordinary shot in the arm for the fledgling SEC whistleblower program. First, their leaders said big awards were coming and they delivered. That is credibility. Second, a successful enforcement strategy uses big cases to get others to talk about your efforts. This will do that. Third, and most importantly this amount of money means the next whistleblower could come out of the corner office as it is enough to encourage the corporate executive with vast knowledge to come forward. Finally, this puts those that counsel companies on notice that their clients must redouble efforts to prepare for likely whistleblower situations."

Bryan House, [Foley & Lardner LLP](#)



"The award is significant for two reasons. First, the sheer size of the award — twice the previous record award — is noteworthy. And it could have been bigger if not for a downward adjustment based on a purportedly 'unreasonable' delay in reporting the violations. This adjustment may embolden whistleblowers to go to the SEC even faster and based on incomplete information. Second, the award confirms that the SEC will not be deterred by Second Circuit's recent suggestion in Liu v. Siemens that the SEC's assertion of extraterritorial application of the award provisions may not necessarily be entitled to deference."

Bradford D. Kaufman, [Greenberg Traurig LLP](#)

"The award is significant because it is only the fourth award to a whistleblower living in a foreign country. The award demonstrates the expansive reach of the SEC's whistleblower program. Given the size of the award — the largest whistleblower award to date — informants will be more likely to report potential violations of securities laws."

Philip Khinda, [Steptoe & Johnson LLP](#)



"Corporate America didn't need another reminder on the importance of dealing with issues like these quickly and seriously, nor did would-be whistleblowers need another incentive to make noise, but they all have a dramatic one here."

Jason Knott, [Zuckerman Spaeder LLP](#)

"The SEC's bounty award strengthens the incentives for an employee, particularly one in a foreign country, to report allegations of misconduct to that agency rather than seeking to address the issue internally. A number of courts have already ruled that Dodd-Frank does not protect a foreign employee's internal reporting of misconduct overseas. Now, those employees have the added incentive of a potentially life-changing bounty, which will serve as additional motivation for them to go to the agency first."



Edward O'Callaghan, [Clifford Chance LLP](#)



"The message being sent by the SEC with this unprecedented whistleblower award to an individual outside of the United States is clear: the SEC's bounty program is open to anyone who has credible, original information that leads to a successful enforcement action, no matter where that individual is located. Given the SEC's statement with an emphasis on the potential monetary incentives for whistleblowers, even those outside the U.S., we should expect to see more enforcement investigations and enforcement actions that can trace their origins to individuals from foreign countries."



Allison O'Neil, [Edwards Wildman Palmer LLP](#)

"This record-breaking award will undoubtedly encourage future tipsters to come forward as soon as they are aware of fraud. Given the length of time it takes for a tip to turn into an enforcement action, it may not be the only large award we see in 2014. The momentum behind the Dodd-Frank whistleblower program is building. I am certain that we will see more large awards and enforcement actions as a result of tips in the months to come."

Steven Pearlman, [Proskauer Rose LLP](#)

"The sheer enormity of this award is likely to lead to an influx of tips, as some may be inclined to treat the SEC whistleblower program as a lottery. Query whether the SEC has developed a sufficiently robust triage process to avoid such a scenario. This award also underscores that eligible tipsters are located around the world; indeed, the SEC believes there is no geographic barriers to its bounty program."



Carrie Penman, NAVEX Global



"Think high stakes whistleblowing is just a U.S. thing? Think again. This award is monumental and will send shock waves around the financial world. The dollar level is more than double the previous highest award and would have been even higher if the whistleblower had not delayed providing the information to the SEC. And, this award will go to a foreign whistleblower while the UK and others countries are taking a position against the paying of whistleblower bounties. There is a lot of misguided belief that the phenomenon of whistleblowing is a uniquely American phenomenon and that it does not culturally 'fit' outside the U.S. This is a wake-up call that, while whistleblowing may be culturally distasteful, foreign countries and

companies are not immune as non-U.S. employees may start to 'export' their reports to regulators in the countries who are paying awards."

Doug Peterson, [Stinson Leonard Street LLP](#)



"Whistleblowing incentives are good public policy, but the government should not lose sight of what it means to spend wisely. It might be good politics to give a headline sum to one citizen, but is it good government to spend that much on one bounty?"

Eli Richardson, [Bass Berry & Sims PLC](#)

"At \$30 million, this award is more than twice as large as any award previously made by the SEC. We've seen awards right around \$100 million under both the False Claims Act and the [IRS's](#) whistleblower program, but today's award is the first time the SEC has made an award of even the same order of magnitude. For those who, as recently as a year ago, wondered whether the SEC's Dodd-Frank whistleblower awards program would offer major incentives, this award provides another resounding answer in the affirmative. Accordingly, public companies and their leaders would be well-served to ensure that adequate attention and resources are devoted to the proper handling of internal complaints and other key compliance imperatives."



Linda Riefberg, Cozen O'Connor

"It is difficult to judge the significance of the award since we have no details about the size of the

fraudsters' benefit, the investor damages or extent of market harm. We also do not know whether the whistleblower raised the problem in time to prevent injury, and even if the whistleblower had clean hands or was somehow involved in the fraud reportedly at play here. I would expect that there was a lot at stake in the underlying troubles to warrant an award of that size but it is hard to evaluate the award without knowing the underlying facts. However, what is clear is that awards of that magnitude will encourage people in the United States and globally to step forward and finger those directly involved in misdeeds. Of course, it will also help to build a cottage industry of lawyers and consultants who can assist and benefit from whistleblowers. Similarly, it should act as a wake up call that companies need to have effective mechanisms for detecting problems internally — and self-report to the regulator if appropriate — before they become ripe for whistleblowers.”

Michael J. Rivera, [Venable LLP](#)



“This whistleblower award is a major development for foreign and domestic companies subject to SEC jurisdiction. The sheer size of the award — \$30 million — will motivate people to file claims who may not have previously considered doing so, particularly foreign citizens. The SEC made clear in its order granting this award that foreign citizens are entitled to receive whistleblower awards and that the misconduct leading to the violation by the sanctioned company could occur entirely overseas. Thus, companies may well see an increase in internal complaints filed by foreign employees, and they would be well advised to handle such complaints properly.”

Christopher Robertson, [Seyfarth Shaw LLP](#)

“This award is significant for a number of reasons. First, it reinforces the SEC’s commitment to the bounty program established under Dodd-Frank and its willingness to pay bounties where original information leads to significant recoveries. Second, the size of the award will likely encourage additional whistleblowers to come forward, knowing that they can come forward and obtain a significant recovery while remaining anonymous and protected.”



Jason Ross, [Dykema Gossett PLLC](#)



“The size of the award is certainly significant. Still, the Dodd-Frank identity protections prevent companies from putting this award in context. In previous awards, the SEC has not disclosed details about the type of information revealed by its whistleblowers, the wrongful conduct that was exposed, or the specific enforcement results achieved. In light of the thousands of tips received by the Office of the Whistleblower, the dozen or so payouts to date, and the lack of detail on the nature of the information provided, a company aiming at robust compliance doesn’t have much to learn from a \$30 million number alone.”

Mark H. Schlein, [Baum Hedlund Aristei & Goldman PC](#)



“This case is very significant for several reasons. The extraordinary size of the reward demonstrates the importance of the underlying SEC enforcement action. It is an acknowledgement by the SEC of the singular importance of whistleblowers to the success of their enforcement actions. It also demonstrates the willingness of the SEC to keep the identity of the whistleblower confidential. For all these reasons it was a great outcome for the SEC and their whistleblower program, and should encourage all whistleblowers to come forward and report fraud.”

Claudius

Sokenu, [Shearman & Sterling LLP](#)



“As the SEC continues to award record sums of money to whistleblowers, the likelihood is that we are going to see more and more people turn to the government in the first instance to report potential violations of law both in the United States and overseas. Moreover, these record awards, along with recent judicial opinions concerning whether a whistleblower who reports internally first qualifies for an award under the Dodd-Frank Act, have the potential to materially weaken the significant efforts that corporations are making to build robust compliance programs.”

Stephen R. Spivack, [Bradley Arant Boult Cummings LLP](#)



“The record-setting \$30 million whistleblower award announced today by the SEC more than doubled the previous high for an award and should not be ignored or overlooked. The government’s increasing reliance on whistleblowers to initiate investigations is a new arrow in the government’s enforcement quiver and these awards are here to stay. They are meant to incentivize both whistleblowers and whistleblower counsel to report wrongdoing directly to the SEC and not to the employee’s employer. An award like the one announced today is a powerful reminder to all companies to review and, if necessary, update their compliance and internal reporting policies to encourage employees who suspect wrongdoing to bring their concerns to management’s attention so that a company may investigate and, if necessary, take remedial actions before the U.S. Government launches an investigation.”

Michael B. Stuart, [Steptoe & Johnson PLLC](#)

“The award is significant on several levels — the size of the award is a signal to the industry that enforcement of fraud is being taken very seriously. It is also a significant encouragement to prospective whistleblowers to report abuse for benefit of a massive golden parachute. This should be a strong encouragement to the industry to better self-police its behavior.”



Arun Subramanian, [Susman Godfrey LLP](#)



“Just a few days after Attorney General Eric Holder’s promise of bigger awards for whistleblowers, this award shows the DOJ’s commitment to the Dodd-Frank program and goes a long way toward answering skeptics who wondered how whistleblowers would fare in this process. It’s also a wake up call for those who have inside information on Wall Street wrongdoing — come forward and you could be rewarded handsomely for blowing the whistle on corporate fraud.”

Lawrence West, [Latham & Watkins LLP](#)

“In just over a year, the largest announced SEC whistleblower award has increased from \$150,000 to \$14 million to \$30 million. When the award program was first announced, many in the defense bar and corporate community voiced concern that outsized awards would lead employees to bypass internal mechanisms in favor of reporting tips directly to the SEC. We have not seen evidence of a major change in corporate America in the wake of last year’s announcement of a \$14 million award, and today’s announcement of a \$30 million award again poses the question of whether there is an amount that will tip the balance, leading to a sea change in the efficacy of internal whistleblowing programs.”

Peter R. Zeidenberg, [Arent Fox LLP](#)

“An award this size will be seen by many as no different than winning the lottery. And, like the lottery, you have to play to win. Except instead of buying lottery tickets, ‘players’ will be providing the SEC with information and tips. I would expect that there will be many people reporting what they believe to be fraudulent activity in the hopes of a huge payout like this.”

