

THE
NATIONAL LAW REVIEW

Quarterly Whistleblower Award Update - August 21, 2014

Thursday, August 21, 2014

Since our last [quarterly update](#), the SEC's Office of the Whistleblower ("OWB") has issued four denial orders and three award orders. Here are some lessons learned from this activity:

- **The SEC Will Not Award Whistleblowers Who Provide Frivolous Information.** The SEC determined that a claimant (who submitted "tips" relating to almost every single Notice of Covered Action) was ineligible for awards because he/she "has knowingly and willfully made false, fictitious, or fraudulent statements and representations to the Commission over a course of years and continues to do so." Under Rule 21F-8, persons are not eligible for an award if they "knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or use any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another authority." 17 C.F.R. § 240.21F-8(c)(7). The OWB found that a number of passages submitted by the claimant were patently false or fictitious and that the person had the requisite intent because of the (1) incredible nature of the statements, (2) continued submissions that lack any factual nexus to the overall actions, and (3) refusal to withdraw unsupported claims at the request of the OWB. (May 12, 2104.)
- **The SEC Will Enforce the Time Frames Set Forth in the Statue.** The OWB denied two awards because the claimants did not submit an award claim within the 90-day period established by Rule 21F-10(b). The claimants argued that OWB should waive the 90-day period due to extraordinary circumstances. See 17 C.F.R. § 240.21F-8(a). The OWB determined that neither a lack of awareness that the information that the whistleblower had shared would lead to a successful enforcement action nor the lack of awareness that the Commission posted Notices of Covered Actions on its website constitutes an extraordinary circumstance to waive the timing requirement. See SEC Release No. 72178 (May 16, 2014) and SEC Release No. 72659 (July 23, 2014).
- **Whistleblowers are Not Eligible for an Award Unless the Information Leads to a Successful Enforcement Action.** The OWB denied an award to a claimant because the provided information did not lead to a "successful enforcement by the Commission of a federal court or administrative action, as required by Rules 21F-3(a)(3) and 21F-4(c) of the Exchange Act." OWB also noted that the claimant did not submit information in the form and manner required by Rules 21F-2(a)(2), 21F-8(a), and 21F-9(a) & (b) of the Exchange Act. See *In the Matter of Harbinger Capital Partners, LLC*, File No. 3-14928 (July 4, 2014).
- **The OWB Can Be Persuaded to Change Its Preliminary Determination.** Although the OWB initially denied the whistleblower's award claim on the basis that the information did not appear to have been voluntarily submitted within Rule 21F-4(a)(ii) because it was submitted in response to a prior inquiry conducted by a self-regulatory organization ("SRO"). In a Final Determination issued on July 31, 2014, however, the OWB determined that claimant was entitled to more than \$400,000. OWB noted that a submission is voluntary if it is provided before a request, inquiry, or demand for information by the SEC in connection with an investigation by the Public Company Accounting Oversight Board, any self-regulatory organization, Congress, the federal government, or any state Attorney General.

Drinker Biddle®

Article By [Daniel E. Brewer](#)
[William L. Carr](#) Drinker Biddle & Reath LLP
[Securities Law Perspectives](#)

[Criminal Law / Business Crimes](#)
[Securities & SEC](#)
[Corporate & Business Organizations](#)
[Labor & Employment](#)
[Administrative & Regulatory](#)
[All Federal](#)

On the basis of the unique circumstances of this case, the OWB decided to waive the voluntary requirement of Rule 21F-4(a) for this claimant. The SEC noted that the claimant “worked aggressively ... to bring the securities law violations to the attention of appropriate personnel,” the SRO inquiry originated from information that in part described claimant’s role, claimant believed that the company had provided the SRO with all the materials that claimant developed during his/her own internal efforts, and claimant promptly reporting to the SEC that the company’s internal efforts as a result of the SRO inquiry would not protect investors from future harm. Sean McKessy, chief of the SEC’s Office of the Whistleblower, remarked that “[t]he whistleblower did everything feasible to correct the issue internally. When it became apparent that the company would not address the issue, the whistleblower came to the SEC in a final effort to correct the fraud and prevent investors from being harmed. This award recognizes the significance of the information that the whistleblower provided us and the balanced efforts made by the whistleblower to protect investors and report the violation internally.” See SEC Release No. 72727 (July 31, 2014); SEC Press Release, “[SEC Announces Award for Whistleblower Who Reported Fraud to SEC After Company Failed to Address Issue Internally](#),” (July 31, 2014).

- **SEC Continues to Make Awards to Qualified Claimants.** On June 3, 2014, the SEC awarded two claimants 15% each for a total of 30% percent of the monetary sanctions collected in the covered action. See SEC Release No. 72301 (June 3, 2014). On July 22, 2014, the SEC awarded three claimants 15%, 10%, and 5% respectively (for a total of 30%) of the monetary sanctions collected in the Covered Action. See SEC Release No. 72652 (July 22, 2014).

© 2019 Drinker Biddle & Reath LLP. All Rights Reserved

Source URL: <https://www.natlawreview.com/article/quarterly-whistleblower-award-update-august-21-2014>