

Whistleblower-Based Actions Contribute to Ramped Up Enforcement of Anti-Bribery Statute

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The government's ramped up enforcement of the Foreign Corrupt Practices Act is being fueled by an important new source of leads: SEC whistleblowers.

I previously wrote about the SEC's whistleblower program, which is part of the Dodd Frank Wall Street Reform Act and was launched in August. It mandates payment of incentive awards of up to 30% to whistleblowers who report violations of the securities laws. Participants have the right to remain anonymous, thereby safeguarding their identities and careers.

SEC Program Applies to Bribery Tips

You might think that the SEC whistleblower program only applies to tips regarding improper practices on Wall Street. But the fact is that the FCPA, which bans companies from bribing foreign officials in order to secure contracts, was codified as part of the securities laws. Its provisions are part of the accounting transparency requirements of the Securities Exchange Act of 1934. They apply to all public companies whose shares are registered with the SEC. Hence, FCPA violations are also subject to SEC jurisdiction, and whistleblowers who report them are fully entitled to file claims – and to receive rewards – under the SEC whistleblower program.

This is good news for FCPA whistleblowers. While the SEC has been criticized for its tepid enforcement, its efforts to hold companies accountable for violations of the FCPA have been incredibly aggressive, with numerous enforcement actions in the last few years generating a continuous string of record settlements amounting to billions of dollars. This suggests that tips regarding FCPA violations will be given high priority and that successful actions are more likely to result in large recoveries (and correspondingly big awards for whistleblowers).

Indeed, the big law firms that represent FCPA defendants have been issuing warnings about the "enormous" and "enticing" financial incentives provided to whistleblowers by the new SEC program, and the increased compliance risks that companies consequently face. The SEC's annual report also confirms a surge in FCPA tips.


Large Potential Incentive Awards

FCPA recoveries -- and potential whistleblower incentive awards -- can be huge. Some of the largest FCPA settlements of 2011 include \$137 million paid by Alcatel-Lucent (ALU), \$16.2 million by Aon (NYSE:AON), \$10.29 million by Armor Holdings, a subsidiary of BAE Systems (OTCPK:BAESY), and \$77 million by Johnson & Johnson (NYSE:JNJ). J&J was charged with paying bribes to public doctors in Greece who selected J&J surgical implants, public doctors and hospital administrators in Poland who awarded contracts to J&J, and public doctors in Romania to prescribe J&J pharmaceutical products.

Then, there's the recent FCPA action against seven former executives of Siemens AG (NYSE:SI) over their alleged involvement in a decade-long bribery scheme to retain a \$1 billion contract to produce national identity cards for the government of Argentina. The charges are still pending, but Siemens itself previously paid \$1.6 billion to resolve charges related to the scheme in the largest FCPA settlement in history.

Whistleblowers are crucial to government FCPA enforcement efforts. Illegal bribes are generally disguised as legitimate payments – for example, on sham contracts – thus making FCPA violations difficult to detect. Whistleblowers often provide the inside knowledge necessary to crack the case.

Disclosure: I have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

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The Mad Hedge Fund Trader

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Buried in the recently passed Dodd-Frank financial reform bill are massive financial rewards for turning in your crooked boss. The SEC is hoping that multimillion dollar rewards amounting to 10%-30% of sanction amounts will drive a stampede of whistleblowers to their doors with evidence of malfeasance and fraud by their employers.

If such rules were in place at the time of the settlement with Goldman Sachs (GS), the bonus, in theory, could have been worth up to \$500 million. Wall Street firms are bracing themselves for an onslaught of claims, legitimate and otherwise, by droves of hungry gold diggers looking for an early retirement.

Don't count on this as a get rich quick scheme. Government hurdles to meet the requirement of a true stoolie can be daunting. The standard of evidence demanded is high, and must be matched with the violation of specific federal laws. Idle chit chat at the water cooler won't do. Litigation can stretch out over five years, involve substantial legal costs, and often lead to a non-financial settlement with no reward. For those who do deliver the goods, death threats from defendants are not unheard of.

Having 'rat' on your resume doesn't exactly look inviting either. Just ask Sherron Watkins, the in-house CPA who turned in energy giant Enron's Ken Lay, Andy Fastow, and Jeffrey Skilling just before it crashed in flames. Nearly a decade later, Sherron earns a modest living on the lecture circuit warning of the risks of false accounting, and whistleblowing. There have been no job offers.

- The Mad Hedge Fund Trader -

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