

December 15, 2010

Re: File No. S7-33-10

Commissioners:

I have several concerns regarding providing rewards to whistleblowers:

1. The reward being in the agency's discretion is problematic. The awards are discretionary in 4 respects: (1) It is a gray area as to whether the complaint led to the investigation and monetary penalty; (2) the award amount can range from 10 to 30%; (3) the SEC has discretion in the amount of the penalty or settlement; (4) the SEC has discretion whether to undertake any enforcement action at all. These three factors allow the SEC too much discretion in how much they might pay to a whistleblower that is putting his career on the line.
2. Many claims are settled for what the companies deem to be nuisance value. For a large company, this nuisance value can be millions of dollars. It seems perverse to reward someone for a claim that may not have merit and is settled merely on the basis of nuisance.
3. The need to have an attorney to file a claim is problematic. Lawyers are expensive and should not be required for you to file a complaint and request a reward for your efforts.
4. A complainant should not need to fill out a bunch of forms to get a reward. They should merely have to read a short disclaimer, fill-out contact information, and check a box on the complaint form to be eligible to get a reward.
5. Any employee or insider who works in a compliance capacity should not be eligible for a whistleblower reward, but should be eligible for transactional immunity depending on their involvement in the wrongdoing.
6. The SEC lacks the staff to chase down every whistleblower complaint it receives. The IRS has a staff of more than a hundred thousand and even it cannot keep up with the number of whistleblower complaints it receives.
7. The "independent knowledge" requirement is foolish. Even if the information is publicly available, if nobody has analyzed the information in such a way as to find fraud, but you have, you should be eligible for a reward. It is also unclear what is meant by "publicly available". Is a proprietary database considered to be "publicly available" if anyone can pay a subscription fee and get access to it? The independent analysis requirement should be the only requirement.
8. One idea to aid in the implementation of the program is as follows: Create a database of complaint data. Let private bar lawyers who meet certain criteria have access to this database subject to a duty of confidentiality and a duty not to trade. Then, let the private bar investigate and bring cases on behalf of the SEC and let them keep one-third of any fine or settlement they receive. All fines and settlements will be subject to Commission approval and established SEC guidelines, as well as appeal.
9. The idea of a confidential complaint will have no value if an employee is first required to make a formal in-house complaint. It would be clear who raised a substantially similar

complaint with the SEC. Therefore, either do not require employees to file a complaint in-house, or get rid of the guise of confidentiality.

10. I believe that filing a complaint based on inside information and getting a reward based on that inside information is very similar to insider trading, which is the profiting off of insider information. The adopting release should make clear the policy reasons for a reward program and distinguishing it from insider trading.

A similar whistleblower program should be implemented at the SRO level, namely FINRA, with respect to sales practice violations. FINRA dollar threshold should also be substantially reduced.

Respectfully submitted,

Michael Lawrence