BETTER MARKETS

SPECIAL REPORT

The SEC's Whistleblower Program Is Key to Protecting the Economy and Main Street Americans' Wallets

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Overview

The US economy, businesses, jobs, and standard of living depend on the capital markets to provide much of the money necessary to make all that work. However, that only works if investor—those who have the money and make the decisions of where to invest it—have deep and abiding trust and confidence that those markets are relatively safe and well-run places to put their money. Remember, those investors are from all over the world, and they have a very wide variety of choices of what to invest in and where.

Those who make the choice to invest in the US know that they might lose money on a bad investment. But they are reasonably confident that they won't just be ripped off or lied to, or, if they are, that there is a reasonable prospect that those who do that will be caught and stopped. So the reason our markets are so successful is because investors trust them.

Put differently, the foundation of US capital markets is investors' belief that those markets are well-regulated and well-policed. That's why the Securities and Exchange Commission ("SEC"), the leading regulator of the capital markets, is so important not just to those markets, but to the economy and to the lives and livelihoods of all Americans. However, the SEC can't do it all alone, which is why the SEC's whistleblower program was created: to incentivize those who are aware of lawbreaking in the markets to come forward and help the SEC do its job stopping lawbreaking and protecting investors and markets.

"...The SEC's whistleblower program has been a resounding success...it has benefited investors by allowing the SEC to pursue enforcement actions resulting in more than $6 billion in monetary sanctions."

By any measure, the SEC's whistleblower program has been a resounding success. As demonstrated in our previous reports, it has benefited investors by allowing the SEC to pursue enforcement actions resulting in more than $6 billion in monetary sanctions. Whistleblowers who provide the SEC with the original information that leads to these actions receive an award, and this award costs taxpayers nothing because the SEC pays the award from the money it recovers from fraudsters. Whistleblowers receive these awards because they identify misconduct that the SEC might not otherwise uncover.

This means that, if recent reports about potential staffing cuts at the SEC prove true, the importance of the whistleblower program in the coming years will only increase. The Wall Street Journal reports that the Department of Government Efficiency ("DOGE") will target cuts at agencies including the SEC. One of DOGE's goals is to reduce the size of the federal workforce, so cuts at the SEC could mean fewer enforcement personnel.

Fewer enforcement personnel at the SEC would be a disaster for investors. The SEC is already underfunded. It must protect investors from potential misconduct at 33,000 regulated entities, 8,300 reporting companies, and 56,000 private funds. As a result, it is already nearly impossible for the SEC to monitor the entirety of the securities markets. Any actions that DOGE took to further reduce the SEC's enforcement capabilities would only make a difficult task even harder and force greater reliance on private actors.

> Any effort to reduce the SEC budget in a non-trivial way would no doubt run through [the enforcement] division since it comprises nearly one-third of the agency's staff and annual spending. Significant reductions in the number of Enforcement staff would require the agency to be far more selective in choosing cases to investigate and litigate. . . . A scaled down enforcement division would perhaps pursue only mammoth cases where there is widespread investor harm.

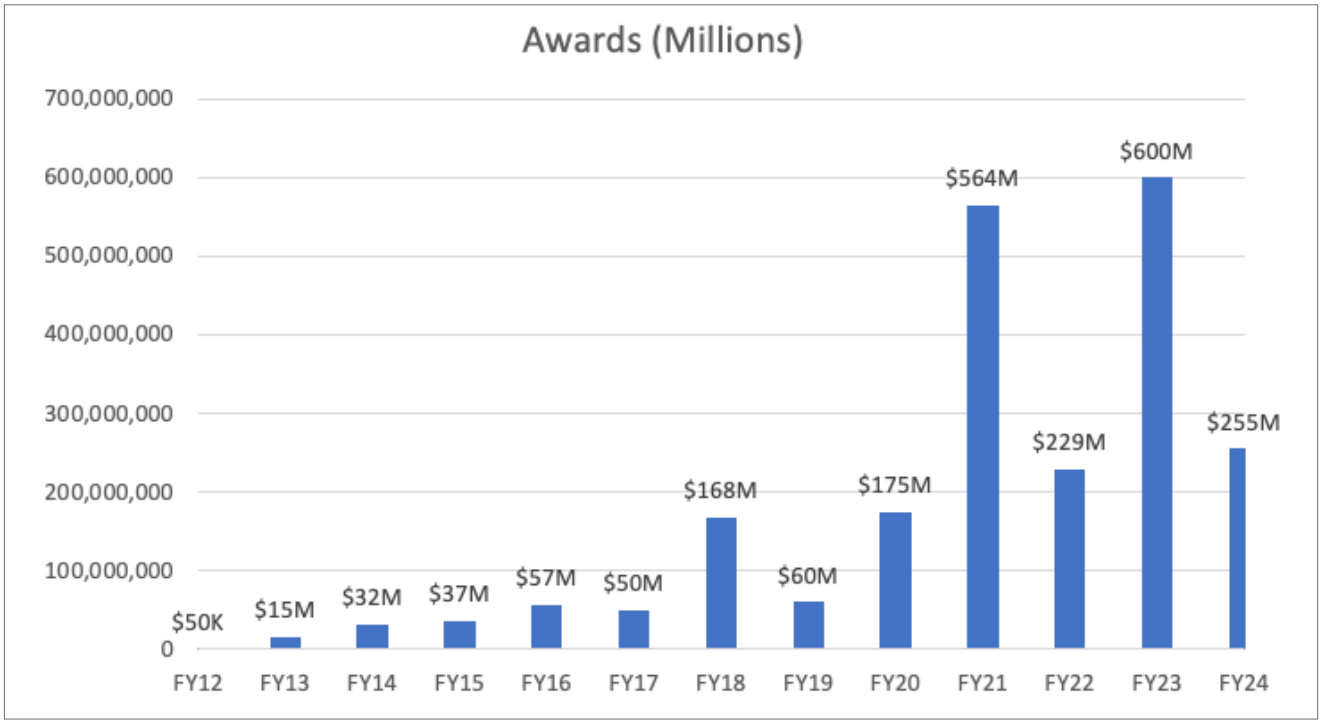
This means the SEC would need more help in holding fraudsters accountable. Fortunately, the purpose of the SEC's whistleblower program is to motivate people who know of securities violations to report them to the SEC and thereby assist the government in identifying and prosecuting individuals who have violated the securities laws. So if the SEC won't have the resources it needs to investigate anything other than the biggest cases, it will have to rely more heavily on whistleblowers to identify misconduct.

This report highlights the whistleblower program's accomplishments in fiscal year 2024, the need for the public to understand the benefits to investors that the program provides, and the criticisms—both fair and unfair—that the program faces.

The Whistleblower Program's Accomplishments in Fiscal Year 2024

The SEC issued over $255 million to whistleblowers

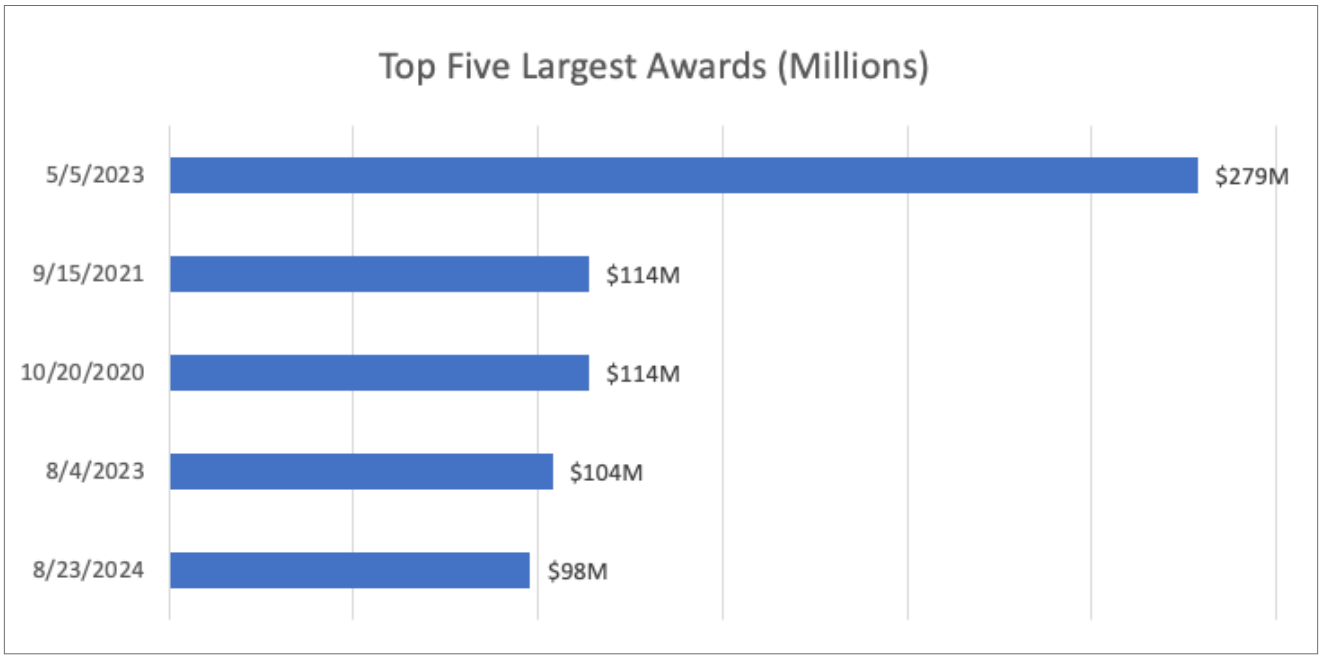
In fiscal year 2024, the SEC awarded over $255 million to 47 individual whistleblowers. This was the third highest annual amount in the history of the program. The only years in which the SEC issued a higher amount of total monetary awards were fiscal years 2022 and 2023.



These awards stemmed from 396 applications for whistleblower awards. Whistleblowers are not limited to company insiders and may include investors or other market observers. In fiscal year 2024, 62% of the whistleblowers who received awards were company insiders and 38% of the whistleblowers who received awards were outside the company.

The whistleblower awards also related to 28 enforcement actions. The information that the whistleblowers provided allowed the SEC to open investigations and obtain sanctions. The enforcement actions also resulted in the return of millions of dollars to harmed investors.

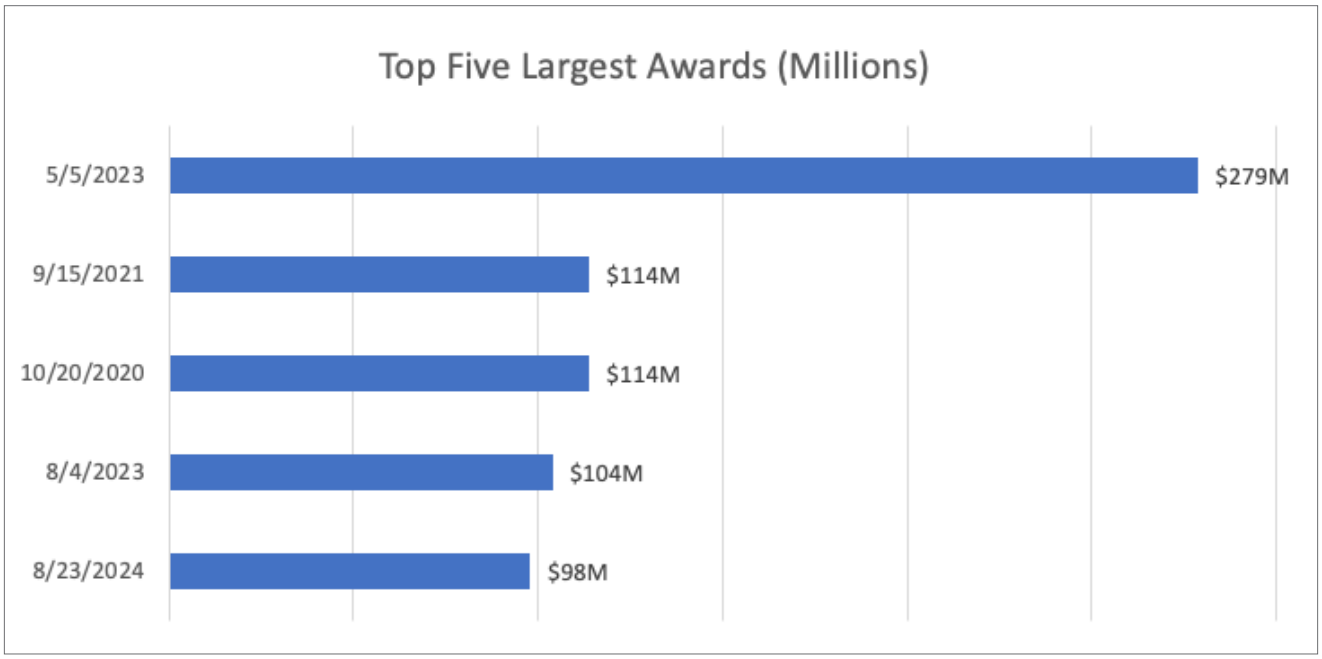
In fiscal year 2024, the SEC also awarded the fifth largest award in the history of the program—a $98 million award split between two whistleblowers. The SEC awarded $82 million to the first whistleblower, whose tip prompted the opening of the investigation, and who thereafter provided critical additional information and ongoing assistance. The combined award continued an upward trend, as the SEC has issued all five of the largest whistleblower awards in the history of the program in the last five years.



Cumulatively, the SEC has awarded more than $2.2 billion to 444 individual whistleblowers since the program's inception in 2011.

The SEC Received a Record Number of Tips

SEC whistleblowers may provide information to the SEC by submitting any tips, complaints, or referrals (TCRs) through the SEC's online portal. In fiscal year 2024, the SEC received approximately 24,980 tips. The 24,980 tips exceeded the record number of tips received that the SEC set just last year, when it received 18,354 tips.



The SEC has now received over 100,000 tips since the inception of the whistleblower program.

Since that time, the most prevalent tips in terms of type of alleged misconduct have remained remarkably consistent. Tips regarding manipulation, offering fraud, and corporate disclosures have always far outpaced most other types of tips and usually comprise the top three allegation types. The only other allegation type to crack the top three has been crypto, which the SEC added as an allegation type to its TCR system in the fourth quarter of fiscal year 2018. Since that time, crypto has consistently been the third- or fourth-most reported allegation type. This makes sense in light of crypto's proliferation during the same time period as the whistleblower program was proving its worth.

The SEC Continued to Enforce the Provision Against Impeding Whistleblowing

The importance of the whistleblower program means that whistleblowers must feel free to report violations of the securities laws to the SEC. To this end, the SEC's whistleblower rules provide that no person may take any action

> to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

As noted in the report we issued on the program last year, the SEC has recently prioritized cases involving violations of this prohibition.

The SEC has brought 32 cases alleging a violation of this provision since the whistleblower program's inception in 2011, and 11 of these cases were brought in fiscal year 2024. That was more than double the number of such cases that the SEC brought in fiscal year 2023. And the five cases the SEC brought in fiscal year 2023 was itself almost 25% of the 21 cases the SEC had brought alleging a violation of the provision against impeding whistleblowing to that point. The SEC brought these cases to "send a strong message about the importance of an unobstructed avenue for whistleblowers to communicate with the Commission." In the words of Creola Kelly, Chief of the Office of the Whistleblower,

> The Commission sent a strong message that agreements and conduct that impede communication with the SEC will not be tolerated.

That message was delivered most strongly in a settled case against JP Morgan Securities LLC ("JP Morgan"). In that case, the SEC found that JP Morgan impeded clients entering into settlements with the firm from disclosing potential violations of the federal securities laws to the SEC unless they were responding to an inquiry from the SEC itself. JP Morgan agreed to pay an $18 million penalty to settle the case—the largest penalty ever imposed for a violation of the prohibition against impeding whistleblowing.

The penalty against JP Morgan was unprecedented, but the conduct was not. The SEC found in another settled action that three other regulated entities—a broker-dealer and two investment advisers—also asked clients, as part of settlement agreements, to represent that they had not reported the underlying dispute to the SEC and would forever refrain from doing so. The firms settled for a combined $240,000 in civil penalties.

The SEC also enforced the prohibition against impeding whistleblowing in cases involving public companies. Seven public companies settled charges that they used employment, separation, and other agreements that required employees to waive their right to possible whistleblower awards. The companies settled for a combined $3 million in civil penalties.

The importance of these cases should not be underestimated. They impress upon regulated entities and public companies that whistleblowers must be able to report potential violations of the federal securities laws to the SEC. The public benefits when whistleblowers are freely able to help the SEC identify securities fraud and other violations.

The Public Must Understand the Benefits of the Whistleblower Program

The fact that the public benefits from the whistleblower program means that the SEC should make those benefits apparent. The benefits are readily apparent to those who follow corporate crime. Last year, in light of the success of the SEC's whistleblower program, we urged other agencies to adopt similar programs. And, this past year, the Department of Justice announced the creation of its own whistleblower program. In doing so, it said it modeled the program on the successful programs run by the SEC and others.

We applaud those charged with defending the public for recognizing the importance of whistleblower programs, but the public itself should understand the importance of such programs. Unfortunately, most of the SEC's orders issuing whistleblowers awards provide very little information about what the

whistleblower did. This prevents the public from understanding that the SEC's whistleblower program is essential for investor protection.

The SEC has good reason to limit the information disclosed in its orders issuing whistleblower awards. That's because the law generally prohibits the SEC from disclosing any information that reasonably could be expected to reveal the identity of a whistleblower. This provision exists because whistleblowers would be less likely to report violations to the SEC if they could not do so confidentially. Confidentiality protects the ensuing investigation by preventing a company from learning that the SEC knows about the misconduct and possibly destroying evidence. Perhaps more importantly, confidentiality protects the whistleblower from retaliation. The price for whistleblowing can be high, including being fired in retaliation and ostracized in the industry. Yet if a whistleblower can report the allegations confidentially then the risk of retaliation decreases significantly. So confidentiality protects a whistleblower's career, finances, and well-being while increasing the likelihood of a successful investigation. As a result, confidentiality is a "cornerstone" of the SEC's whistleblower program. The SEC redacts from the orders that it issues publicly any information that could reasonably be expected to reveal a whistleblower's identity.

We wholeheartedly support the SEC's efforts to protect whistleblower confidentiality. Without such confidentiality, the whistleblower program would collapse.

Still, the whistleblower program would benefit from the public's greater understanding of the assistance that whistleblowers provide. A heavily redacted order prevents the public from understanding the reasons for issuing large awards to whistleblowers and the value to the public of the whistleblower having identified the relevant misconduct.

For example, as discussed above, the $98 million award that the SEC issued this past year was the fifth largest award in the history of the whistleblower program. This suggests that those whistleblowers were particularly important to the SEC's enforcement efforts. But the public would have no way of understanding this importance from the order the SEC issued:

I. Background

A. The Covered Actions

The Commission filed the settled Covered Action against Redacted on Redacted Redacted The Commission's Order against Redacted found that Redacted Redacted . The misconduct related to Redacted Redacted Redacted Redacted Redacted Redacted Redacted Redacted Redacted Redacted . The Commission's Order further found that Redacted Redacted Redacted Redacted was ordered to pay monetary sanctions of more than $1 million, which was paid in full.

The Commission also filed the settled Covered Action against *** on Redacted . The Commission's Order against *** found that Redacted *** . Along with Redacted Redacted Redacted *** was ordered to pay monetary sanctions of more than $1 million, which has been paid in full.

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Again, the confidentiality of whistleblowers must be protected, but the whistleblower program must also be protected. The fact that the only thing that the public really sees in a whistleblower award is the amount of money the whistleblower receives leaves the SEC susceptible to the criticism that it is essentially just overpaying for tips. The reality is that the SEC is rewarding whistleblowers who identify violations of the securities laws, and the public needs to understand that without those tips fraudsters would escape prosecution. The only way for the public to reach this understanding is if the

SEC's orders contain enough information for the public to appreciate the importance of the whistleblowing at issue. So the SEC, while doing everything it can to ensure whistleblower confidentiality, should also do everything it can to make the value of the whistleblowing more transparent.

The fact that the public may not understand the importance of a whistleblower's information may also lead to the view that the purpose of the program is to dole out funds. This is not the case, as the SEC routinely denies whistleblower awards. Yet Acting Chair Uyeda and Commissioner Peirce have noted that a whistleblower has an incentive to obtain the largest award possible, that the Division of Enforcement has an incentive to maximize awards as an inducement for whistleblowers to come forward, and that the SEC has an incentive to maximize awards as a metric to illustrate the success of the program. They argue that greater transparency would be

> a necessary and helpful check on the potential negative consequences of such an alignment of incentives.

Although we think greater transparency is necessary more to boost public awareness of the importance of the information that whistleblowers provide than to serve as a check on overly generous awards, we agree that the public would benefit from greater transparency in award orders.

The Whistleblower Program Faces Criticisms Both Fair and Unfair

The SEC Should Do a Better Job of Communicating with Whistleblowers

The charge that the SEC distributes too much money to whistleblowers too freely is not the only criticism that greater transparency would insulate the program against. Lawyers representing whistleblowers say that there is

> little transparency into how the SEC evaluates tips or decides which whistleblowers to follow up with.

Many whistleblowers receive confirmation that the SEC received their tip and then never hear from the agency again. This makes it difficult for whistleblowers to know how to proceed.

> [Whistleblowers] are often people who care about and enjoy their work—and they choose to risk giving it up to do the right thing. Providing them with high-level updates and information recognizes the professional risk they're taking. The SEC's whistleblower program is successful, but its poor tip communication creates needless stress and uncertainty for these brave individuals.

Communicating with whistleblowers is especially important because it can take years for the SEC to receive a tip, investigate, bring an action, obtain sanctions, and issue an award. Indeed, even meritorious whistleblower award claims "often sit in limbo for four years or more before they are acted on." That is why the SEC must communicate with whistleblowers not only as it pursues a tip but also as it contemplates an award.

Greater communication would also help ensure that whistleblowers who deserve awards receive them. Whistleblowers who provide the SEC with information that leads to a successful enforcement action are not automatically eligible for an award. Instead, once the SEC publicizes an enforcement action, whistleblowers must apply for an award within 90 days. But the SEC provides "little to no communication about whether a whistleblower's tip led to an enforcement action." So if "a whistleblower or their attorney miss the 90-day window to apply for an award, or if it's unclear whether the commission used a whistleblower's information in an enforcement action, whistleblowers may lose their opportunity to receive an award." Greater communication would fix this situation.

The SEC Should Discipline Individuals Who Abuse the Program

Communication with whistleblowers is not the only part of the program that the SEC should improve. As discussed above, the SEC received a record number of tips in fiscal year 2024. But of the 24,980 tips the SEC received, over 14,000 of them were submitted by two individuals. And those same two individuals also submitted nearly 7,000 of the then-record 18,354 whistleblower tips submitted in fiscal year 2023. The fact that two individuals submitted so many tips—which suggests that the thousands of tips they submitted were not of high quality—means that the fact that the SEC set a record in tips received the last two years comes with a significant asterisk. It raises important questions "about how the SEC controls against such potentially abusive practices."

Fortunately, these questions have an answer. The SEC's whistleblower rules authorize the SEC to permanently bar a claimant from the program based on submissions or applications that are frivolous or fraudulent, or that otherwise hinder the effective and efficient operation of the whistleblower program. The SEC added this provision to its whistleblower rules in 2020 "to allow the whistleblower program to operate more effectively and efficiently and to focus on good faith whistleblower submissions."

Since that time, the SEC has invoked this provision to bar individuals who have submitted frivolous award claims. In 2021, the SEC barred two individuals from the whistleblower program for filing hundreds of frivolous award applications. In doing so, it said:

> The filing of these applications consumed considerable staff time and resources, hindered the efficient operation of the program, and did not contribute to any successful enforcement action. These individuals were repeatedly warned to stop submitting the abusive filings, but refused to do so. 'Frivolous award applications hamper our ability to efficiently process awards to meritorious whistleblowers who come forward with helpful information intended to assist law enforcement,' said Emily Pasquinelli, Acting Chief of the SEC's Office of the Whistleblower. 'Today's permanent bars send an important message that frivolous award filers will not be tolerated.'

The SEC sent a similar message just last year. It barred an individual from participating in the whistleblower program for submitting five frivolous award applications. The SEC found the applications to be frivolous because the information that the individual submitted did not relate to the referenced enforcement actions and "could not have contributed to any successful enforcement action." The applications therefore unnecessarily consumed considerable staff time and resources and hindered the efficient operation of the whistleblower program. The SEC should consider taking similar action against individuals who impede the program by submitting frivolous tips.

Whistleblowers Deserve to be Represented by Competent Counsel

The SEC should rectify its lack of communication with whistleblowers and the ability of a few individuals to flood the agency with tips, but the program faces other criticisms that are both less valid and more pernicious. Specifically, critics disparage the program for benefitting the attorneys who represent whistleblowers. According to them, the whistleblower program has led to a problematic new business model for lawyers—representing whistleblowers. The reason they view this new business model as problematic is that, in terms of obtaining whistleblower awards,

> tipsters represented by lawyers appear to significantly outperform unrepresented ones, repeat-player lawyers appear to outperform first-timers, and lawyers who used to work at the SEC appear to outperform just about everybody.

So opponents of the whistleblower program criticize it for allowing lawyers, "many of whom are SEC alumni, [to] creat[e] a lucrative business." The facts about whistleblower representation are undoubtedly true, but it is unclear why this is surprising or problematic.

It makes sense that whistleblowers represented by lawyers would be more successful in obtaining whistleblower awards than unrepresented whistleblowers, just as it makes sense that defendants who are represented by counsel in almost all other legal matters are more successful than unrepresented defendants. Similarly, it makes sense that lawyers with experience navigating the whistleblower award process would have more success than lawyers who are navigating that process for the first time, just as it makes sense that lawyers who appear before any tribunal repeatedly generally are more successful than lawyers appearing before that tribunal for the first time. And it makes sense that lawyers who used to work at the SEC would be more successful in obtaining whistleblower awards for their clients, just as it makes sense that lawyers who used to work at the SEC are more successful in defending their clients in SEC enforcement actions.

What doesn't make sense is why there is an outcry about former SEC officials successfully and repeatedly representing whistleblowers but no similar outcry about former SEC officials successfully and repeatedly representing defendants accused of wrongdoing. There is no question that there is a "revolving door" for securities lawyers between the SEC and private practice. This door usually leads former SEC officials to white-collar defense groups at large law firms. These officials then represent defendants in SEC enforcement actions. And it is lucrative for them to do so. This paradigm has existed for decades. Yet when the revolving door leads former SEC officials to represent whistleblowers with crucial information that may help the SEC identify misconduct, that is viewed as a problematic new business model that should cast suspicion on the whistleblower program.

That should not be the case. To the contrary, we should want whistleblowers to be represented by competent counsel. As the legislative history of the SEC's whistleblower program states, whistleblowers "often face the difficult choice between telling the truth" and "committing 'career suicide.'" The program exists to incentivize individuals who are deciding

> whether to take the enormous risk of blowing the whistle in calling attention to fraud.

No less than defendants in enforcement actions, whistleblowers should have access to experienced and knowledgeable counsel as they decide whether to report potential misconduct and when they seek to obtain an award from the SEC for doing so.

Conclusion

At the outset, we noted that DOGE's goal of reducing the size of the federal workforce could imperil SEC enforcement efforts and increase the importance of the SEC's whistleblower program. DOGE's mandate is vague at this point, but its potential influence should not be taken lightly. Already, numerous groups and individuals are providing DOGE with recommendations as to how it should accomplish its professed mission. One such recommendation is to combine the functions of the SEC and the Consumer Financial Protection Bureau—and DOGE has already targeted the CFPB for elimination. To the extent the SEC had to take on the CFPB's responsibilities, that would surely impede the SEC's efforts to police the securities markets. If these or other actions that would reduce the ability of the SEC to pursue enforcement cases become reality, the SEC's whistleblower program will become even more essential to investor protection than it already is today.

BETTER MARKETS

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Better Markets is a public interest 501(c)(3) non-profit based in Washington, D.C. that advocates for greater transparency, accountability, and oversight in the domestic and global capital and commodity markets, to protect the American Dream of homes, jobs, savings, education, a secure retirement, and a rising standard of living.

Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

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