Speech by SEC Commissioner: Enlisting Whistleblowers in the Battle Against Securities Fraud

by

Commissioner Luis A. Aguilar

U.S. Securities and Exchange Commission

SEC Open Meeting
Washington, D.C.
November 3, 2010

A clear objective of Congress and the President in the financial reform legislation is that the SEC be vigorous in enforcing the law. The legislation includes a significant number of enhancements to the Commission's law enforcement powers, including increased civil penalties, the ability to impose penalties in cease-and-desist proceedings, and the ability to bar persons who have engaged in misconduct from a wide range of securities industry activities.

On top of these new powers, Congress charged the Commission with establishing a program to encourage individuals to come forward and blow the whistle on wrongdoers. Today's proposal is the first step in establishing such a program.

Whistleblowers come in all forms — investors, disgruntled spouses, corporate insiders, market competitors, and participants in the fraud to name just a few. The Commission already receives over a million tips and complaints annually. With the passage of the Dodd-Frank Act, Congress has specifically mandated that the SEC enlist whistleblowers more directly in the battle against securities fraud by offering them significant financial incentives.

For example, now whistleblowers that meet the eligibility criteria could receive from 10 to 30 percent of the entire monetary relief collected. This could be a substantial sum.

Setting up a whistleblower regime of this magnitude means that there are policy and judgment calls that will be made and these have ramifications.
First, should persons who were themselves involved in the misconduct be eligible to be a whistleblower? It seems odd that a program to deter and ferret out wrongdoing may pay financial incentives to those doing the wrong.

Congress was concerned about this issue, and the Dodd-Frank Act expressly prohibits persons who are criminally convicted of misconduct from being eligible for a reward. The Dodd-Frank Act, however, is silent as to the effect of a civil judgment. Today's proposal contains some limitations on the amount of the payments to persons who directed, planned, or initiated a violation. Nonetheless, it remains possible that a wrongdoer could get paid a reward.²

I am interested to hear from commenters on this issue. Our proposal asks a series of questions that I would like to highlight:

- Should we instead exclude any wrongdoer from being eligible to receive an award categorically or in particular circumstances?
- Should an individual's level of culpability be considered as a factor in determining whether the person is eligible for an award?
- Are there other ways in which we should limit the payment of awards to culpable individuals?

It's important to note that wrongdoers already have significant incentives to come forward as they may receive a reduced sanction and other credit for their assistance. In fact, less than a year ago, the Commission established a formal cooperation program for this very purpose. Taking the proposed whistleblower program in conjunction with our cooperation program could lead to the unjust result that wrongdoers receive both reduced sanctions and profit financially. I am interested to hear commenter's views on whether and how the cooperation program and the whistleblower program should interact.

I view a whistleblower program as having the potential to significantly enhance the Commission's enforcement of the federal securities laws. A strong whistleblower program is one that results in high-quality information being submitted to the Commission and enhances the Commission's enforcement program and message of deterrence.

I support the staff's proposal, and thank you for your hard work and thoughtful collaboration.

---

**Endnotes**

1 A whistleblower may be eligible to receive 10 to 30 percent of any
monetary sanction collected in an SEC action, as well as in a "related action" brought by certain governmental authorities and regulatory bodies that is based on the same original information the whistleblower provided to the Commission. See, Dodd-Frank Wall Street Reform and Consumer Protection Act § 922, inserting section 21F(b).

2 The proposed rules addresses whistleblowers who have engaged in misconduct in two ways. First, proposed Rule 21F-14 states that these rules do not provide amnesty. Second, proposed Rule 21F-15 states: "In determining whether the required $1,000,000 threshold has been satisfied...the Commission will not take into account any monetary sanctions that the whistleblower is ordered to pay, or that are ordered against any entity whose liability is based substantially on conduct that the whistleblower directed, planned, or initiated. Similarly, if the Commission determines that a whistleblower is eligible for an award, any amounts that the whistleblower or such an entity pay in sanctions as a result of the action or related actions will not be included within the calculation of the amounts collected for purposes of making payments."