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## In a First, Outsider Gets Whistleblower Award From SEC

*Rebekah Mintzer*

Since the U.S. Securities and Exchange Commission started its whistleblower program back in 2011, it has given out a total of \$55 million in awards to whistleblowers who pointed out wrongdoing at their firms or companies. Until now, all of these awards have involved internal players at the company speaking up about misconduct.

But with its latest whistleblower award, announced on Friday, the SEC has broken the mold by issuing an award to someone who doesn't even work for the organization they blew the whistle on. Since the SEC redacts identifying information in these cases, no one knows the name of the individual who got the award or the name of the company targeted by the enforcement action. What's certain though is that whoever the recipient may be, he or she did pretty well, taking home \$700,000 from the government.

"The voluntary submission of high-quality analysis by industry experts can be every bit as valuable as first-hand knowledge of wrongdoing by company insiders," Andrew Ceresney, director of the SEC's Enforcement Division said in the statement announcing the award. "We will continue to leverage all forms of information and analysis we receive from whistleblowers to help better detect and prosecute federal securities law violations."

Aside from the fact that the whistleblower did not work for the company, it's unclear who the person was or what his or her relationship was to the company. "Is this just somebody who sits at home, is well versed in the market and did some creative analysis and was able to fortuitously come up with some conclusion that there was some sort of fraud and that proved to be true?" says

Steven Pearlman, a partner at Proskauer Rose and co-head of the firm's whistleblowing and retaliation group.

And if people see that a total outsider can claim whistleblower status, Pearlman adds, new would-be whistleblowers could easily appear out of the woodwork with claims that may or may not have legitimacy. "This could create a huge number of tips that could swamp the SEC," he says, "because anybody who sees market trends that may look curious or unusual to them could come up with a theory that it may be attributable to fraud."

Recent awards from the Office of the Whistleblower prove that those who speak out have a lot to gain. In September 2014, the SEC awarded a record \$30 million to a single tipster. If the monetary sanctions that the SEC receives with the help of a whistleblower exceed \$1 million, the whistleblower is entitled to anywhere from 10 to 30 percent of the total cash the SEC collects.

According to Gregory Keating, a partner at Choate, Hall & Stewart, this latest award announcement from the SEC is all the more reason for legal and compliance departments to ensure that they have steps set up to take whistleblower complaints seriously. "My advice to employers is now is the time to take a hard look at your investigation and complaint protocols," he says.

Leaving no stone unturned and whistleblower complaint unaddressed will help companies catch problems before the person goes to the government. But allowing outsiders to blow the whistle seems to raise the chance that a tip about a company will go to the government before anyone has heard about it internally. And under the Office of the Whistleblower's policies, internal reporting

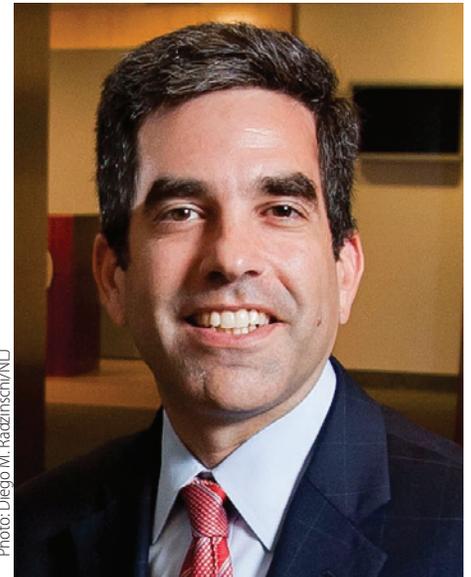


Photo: Diego M. Radzinski/NUJ

**SEC Division of Enforcement director Andrew Ceresney.**

need not happen before an individual takes their complaints to the government.

As a result, says Keating, companies need to look at resources outside the company, such as like blogs and commentary by industry experts or analysts, to see if there's information that points to suspicions about conduct at their company. "You can't just rely on your hotline, because that's not going to be your only source of information for those questioning your practices," he says.

Contact Rebekah Mintzer at [rmintzer@alm.com](mailto:rmintzer@alm.com).

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